

(9)
No. 85-1530

Supreme Court, U.S.

FILED

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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

WILLIAM E. BROCK, SECRETARY OF LABOR, AND
ALAN C. McMILLAN, REGIONAL ADMINISTRATOR,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
APPELLANTS

v.

ROADWAY EXPRESS, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

JOINT APPENDIX

MICHAEL C. TOWERS
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Solicitor General
Department of Justice
Washington, D.C. 20530
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JURISDICTIONAL STATEMENT FILED MARCH 17, 1986
PROBABLE JURISDICTION NOTED MAY 19, 1986

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* The Secretary of Labor's findings and preliminary order, the order of the district court granting appellee's motion for a preliminary injunction, the final order of the district court, and the recommended decision and order of the administrative law judge are printed in the appendix to the jurisdictional statement and have not been reproduced.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA

Civil Action No. 85-0997

ROADWAY EXPRESS, INC.,
A DELAWARE CORPORATION

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,
AND ALAN C. McMILLAN, REGIONAL ADMINISTRATOR,
REGION FOUR, U.S. DEPARTMENT OF LABOR

Case filed 02/01/85

DATE	EVENT
2/1/85	Plaintiff filed complaint; motion for temporary restraining order, preliminary injunction and declaratory relief; affidavit of Harry D. Webb; brief; and emergency motion for expedited hearing
2/7/85	Defendants filed memorandum in opposition to motion for temporary restraining order
2/7/85	Hearing on motion for temporary restraining order and preliminary injunction
2/11/85	Motion for preliminary injunction granted
4/3/85	Defendants filed answer
9/6/85	Plaintiff filed motion for summary judgment, brief, statement of facts, and second affidavit of Harry D. Webb
10/11/85	Defendants filed memorandum in opposition to motion for summary judgment
10/24/85	Plaintiff filed reply to Defendants' memorandum in opposition
11/18/85	Motion for summary judgment granted; judgment entered for Plaintiff
12/17/85	Defendants filed notice of direct appeal to the Supreme Court of the United States

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action File No. C85-997A

ROADWAY EXPRESS, INC.,
A DELAWARE CORPORATION
PLAINTIFF,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,
AND ALAN C. MCMILLAN, REGIONAL ADMINISTRATOR,
REGION FOUR, U.S. DEPARTMENT OF LABOR
DEFENDANTS.

COMPLAINT OF ROADWAY EXPRESS, INC. FOR
TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, PERMANENT INJUNCTION,
AND EMERGENCY DECLARATORY RELIEF

The complaint of Roadway Express, Inc. ("Roadway") respectfully alleges:

JURISDICTION, VENUE AND PARTIES

1.

This action for injunctive and declaratory relief arises under the Fifth Amendment to the Constitution of the United States, the Administrative Procedure Act ("APA") (5 U.S.C. § 551 *et seq.*), and Section 405 of the Surface Transportation Assistance Act of 1982 ("STAA") (49 U.S.C. § 2305). Jurisdiction is based upon 28 U.S.C. § 1331, 28 U.S.C. § 1337, 28 U.S.C. § 1361, 5 U.S.C. §§ 701-706, and for purposes of declaratory relief sought herein, upon the provisions of the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

2.

Venue lies in this Court under 28 U.S.C. § 1391(e) as each defendant is an officer or employee of the United States, the plaintiff and the named defendants reside in this district, and there is no real property involved in this action.

3.

Plaintiff Roadway is a corporation organized and existing under the laws of the State of Delaware. Roadway does business and is duly authorized to do business in the Northern District of Georgia.

4.

Defendant Raymond J. Donovan ("Donovan") is and at all times relevant to this action has been the Secretary of Labor of the United States of America. In such capacity, Donovan has been and is responsible for the administration of and enforcement of the provisions of Section 405 of the STAA (49 U.S.C. § 2305). This defendant's address, for purposes of service of process by registered or certified mail pursuant to F.R. Civ. P. 4 (g)(5) is 200 Constitution Avenue, N.W., Room 52018, Washington, D.C. 20210.

5.

Defendant Alan C. McMillan ("McMillan") is the Regional Administrator of Region Four of the United States Department of Labor ("DOL"), with offices at 1375 Peachtree Street, N.E., Atlanta, Georgia 30367. McMillan has custody of DOL's original file in Case No. 4-0280-84-503(405), on STAA enforcement proceeding initiated on behalf of Jerry W. Hufstetler ("Hufstetler"), a former Roadway employee, who was discharged on

November 22, 1983. On January 21, 1985, McMillan executed preliminary findings and an order in Case No. 4-0280-84-503(405) on behalf of Secretary of Labor Donovan. By its terms, the order requires Roadway to immediately offer Hufstetler reinstatement to his former position of employment before any hearing is held.

FACTS GIVING RISE TO THIS ACTION

6.

On November 22, 1983, Hufstetler, an over-the-road driver based at Roadway's Lake Park, Georgia terminal, made a trip to Roadway's St. Petersburg terminal. At the St. Petersburg, Florida terminal, Hufstetler filed a report requesting repairs to the marker lights on the vehicle he was assigned to drive on his return trip to Lake Park. Roadway's St. Petersburg terminal manager Mike Titus called a local mechanic (not employed by Roadway) to examine and repair the vehicle, and was told by the mechanic that he believed the marker lights had been deliberately unplugged. After investigation of the incident, Titus concluded that Hufstetler had intentionally caused a "breakdown" of his vehicle in order to obtain extra pay for the time he would have to wait for repairs to be made. Titus then reported the facts of the incident to Archie Jenkins, the terminal manager at Roadway's Lake Park, Georgia facility. Later that day, based on facts reported to him by Titus, Jenkins discharged Hufstetler for an act of dishonesty. A copy of Jenkins November 22, 1983 termination letter to Hufstetler is attached to the Affidavit of Harry D. Webb ("Webb Affidavit") given in support of the Motion for a Temporary Restraining Order filed in conjunction with this complaint.

7.

On November 27, 1983, Hufstetler filed a grievance in which he claimed that his discharge was without just cause and in violation of Article 45 of the National Master

Freight Agreement ("NMFA"), the collective bargaining agreement governing the working conditions of Roadway employees represented by Teamsters Local Union No. 528 ("Local 528"), including Hufstetler. A copy of the grievance and pertinent portions of the NMFA (Sections 16 (Safety) and 45 (Discharge)) are attached to the Webb affidavit.

8.

On December 14, 1983, Jenkins and a representative of Local 528, traveled from Lake Park Georgia to St. Petersburg and jointly conducted an investigation of the grievance to determine whether Hufstetler had been properly discharged and to take testimony from witnesses to present to the arbitration panel in the event that Jenkins and the union business agent were not able to resolve the grievance at that stage of the investigation. After conducting personal interviews with all of the witnesses to the events relating to Hufstetler's discharge, Jenkins independently concluded that Hufstetler had deliberately caused a breakdown of his vehicle in order to be paid for waiting time, and therefore refused to reinstate Hufstetler as requested in his grievance.

9.

On December 19, 1983, Hufstetler's grievance was heard before the Southern Multi-State Grievance Committee ("Multi-State Committee"), an arbitration panel established pursuant to the terms of the NMFA. A copy of the transcript of the Multi-State Committee proceedings is attached to the Webb affidavit. The Multi-State Committee deadlocked, and the case was referred to the Southern Conference Area Grievance Committee ("Area Committee"), a second level arbitration panel established pursuant to the terms of the NMFA. On January 30, 1984, the Area

Committee denied Hufstetler's grievance and sustained his discharge for an act of dishonesty in creating a false breakdown at the St. Petersburg terminal. A copy of the Area Committee's decision is attached to the Webb affidavit.

10.

On February 7, 1984, Hufstetler made a telephone call to the Atlanta office of DOL. The DOL noted that he complained that he had been discharged because "the St. Pete terminal manager was upset when [he] requested costly repairs needed for truck driving safety". A copy of a written report of this telephone conversation made by a DOL Supervisor Investigator is attached as Exhibit "A". Upon receipt of this telephonic complaint, DOL began an investigation to determine whether Hufstetler had been terminated from employment by Roadway in violation of STAA, § 405 (49 U.S.C. § 2305).

11.

DOL investigated Hufstetler's complaint through an investigating officer. Pursuant to a DOL request in April, 1984, Roadway submitted a position statement explaining the circumstances of Hufstetler's discharge and the NMFA arbitration decision upholding the discharge. As part of the investigation, Roadway also provided affidavits from Jenkins, Titus, the mechanic and other witnesses.

12.

On September 7, 1984, Roadway's counsel wrote a letter to the DOL stating Roadway's position that any preliminary order reinstating Hufstetler prior to the conduct of an evidentiary hearing would constitute a denial of due process of law under the Fifth Amendment to the United States Constitution. A copy of this letter is attached as Exhibit "B"

13.

On October 18, 1984, Roadway's counsel met with DOL Supervisory Investigator and two DOL attorneys at the Atlanta office of DOL. In this meeting, Roadway's counsel pointed out that the arbitration panel under the NMFA had been presented with Hufstetler's claims and allegations that his discharge was in retaliation for his prior breakdown record and complaints but that, following a full hearing on the Company charges and employee defenses the arbitration committee had resolved the factual disputes and sustained Hufstetler's discharge. Counsel reiterated Roadway's legal position that any temporary order of reinstatement prior to an evidentiary hearing would violate Roadway's right to due process under the Fifth Amendment.

14.

Despite Roadway's protests regarding the procedures followed by the DOL in its investigation, the DOL has denied Roadway access to the written statements of witnesses relied upon by the DOL investigator in concluding that a violation of the STAA occurred, and has refused even to provide the names of such witnesses.

15.

On or about January 21, 1985, DOL rendered its Secretary Findings and Preliminary Order, attached hereto as Exhibit "C", ordering that Hufstetler be immediately reinstated to his former position as a Roadway driver prior to any hearing on Hufstetler's STAA complaint. The January 21, 1985 order also requires the payment of back pay calculated from the date of Hufstetler's discharge.

16.

On or about January 31, 1985, within the 30 day time period allowed by 49 U.S.C. § 2305 (c)(2)(A) of the STAA, Roadway filed its objections to the January 21, 1985 Secretary Findings and Preliminary Order. A copy of said Objections and Request for Hearing is attached as Exhibit "D".

COUNT ONE—INJUNCTIVE RELIEF

17.

The allegations of paragraphs 1 through 16 are incorporated herein by reference.

18.

Section 405(c) of STAA (49 U.S.C. § 2305(c) provides, in pertinent part:

* * * *

(2)(A) where the Secretary of Labor has concluded that there is reasonable cause to believe that a violation [of the STAA] has occurred, he shall accompany his findings with a preliminary order providing the relief prescribed by subparagraph (B) of this paragraph. Thereafter, . . . the person alleged to have committed the violation or the complainant may, within thirty days, file objections to the findings or preliminary order, or both, and request a hearing on the record, *except that the filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order.* . . .

(B) If . . . the Secretary of Labor determines that [an STAA] violation has occurred, the Secretary of Labor shall order (i) the person who committed such violation to take affirmative action to abate the viola-

tion, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, and (iii) compensatory damages

[Emphasis added].

19.

On January 21, 1985, Secretary of Labor Donovan, acting through his agent McMillan, ordered Roadway to reinstate Hufstetler to the position of employment he had held prior to November 22, 1983. This order was entered pursuant to 49 U.S.C. § 2305(c)(2)(A) prior to any evidentiary hearing on the record, and prior to any other hearing process which complies with the minimum requirements of procedural due process under the Fifth Amendment to the Constitution of the United States.

20.

Insofar as the provision of 49 U.S.C. § 2305(c)(2)(A) of the STAA purport to empower defendants to issue a preliminary order of reinstatement against Roadway prior to the conduct of evidentiary hearing procedures which comply with the minimum requirements of procedural due process, such provisions are unconstitutional as violative of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

21.

Unless defendants are immediately ordered to withdraw their preliminary order of reinstatement, Roadway will be forced to reemploy a former employee previously discharged for an act of dishonesty, thereby suffering irreparable harm as follows:

(1) By denial of Roadway's right to due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States;

(2) By overturning the arbitration decision of an impartial arbitral panel established under the collectively bargained National Master Freight Corporation sustaining Hufstetler's discharge, thereby interfering with Roadway's private contractual right to manage and direct its workforce in accordance with the provisions of its collective bargaining agreement with Teamsters Local 528;

(3) By being forced to displace an innocent and honest over-the-road driver based at its fully-staffed Lake Park, Georgia terminal;

(4) By disruption of the morale of Roadway's workforce (including drivers, supervisors and management) upon the reinstatement of an employee previously discharged for dishonesty (a discharge sustained by an arbitration award), and the resulting displacement of an innocent driver;

(5) By incurring the risk that Hufstetler will continue to deliberately create false vehicle breakdowns, or other willful acts of dishonesty, thereby causing Roadway to incur substantial expenses including *inter alia* unnecessary costs of repair and unnecessary waiting time.

COUNT TWO—DECLARATORY RELIEF

The allegations of paragraphs 1 through 21 are hereby incorporated within this Count by reference.

22.

A substantial controversy exists between Roadway and defendants with respect to whether the issuance of defendants' preliminary order of reinstatement, as mandated by Section 405(c) of the STAA (49 U.S.C. § 2305(c)) constitutes a deprivation of Roadway's right to procedural due

process under the Fifth Amendment. Roadway contends that it is entitled to an evidentiary hearing in compliance with requirements of procedural due process prior to the issuance of any order of reinstatement. Defendants contend that the Secretary of Labor has such power under 49 U.S.C. § 2305(c)(2)(A) and in fact have issued and served Roadway with such an order.

23.

The parties have sufficient adverse legal interests to warrant the granting of declaratory relief pursuant to the provisions of 28 U.S.C. § 2201-2202. Due to the immediacy of harm threatened to Roadway, the court should schedule an expedited hearing on Roadway's emergency order for declaratory relief pursuant to Local Rule 220-3 of this district, and thereupon enter an order declaring defendants' January 21, 1985 preliminary order of reinstatement to be void as violative of the Due Process Clause of the Fifth Amendment.

WHEREFORE, Roadway prays for injunctive and declaratory relief as follows:

(1) For entry of a temporary restraining order, preliminary injunction and permanent injunction ordering defendants to withdraw the Secretary of Labor's January 21, 1985 preliminary order of reinstatement in STAA Case No. 4-0280-84-503(405) and further restraining and enjoining defendants from issuing any other such order until such time as defendants have conducted hearing procedures which comply with the minimum requirements of procedural due process under the Fifth Amendment;

(2) For immediate entry of a declaratory judgment (pursuant to Roadway's emergency motion for such relief, filed herewith), declaring the Secretary's January 21, 1985 order to be unconstitutional and void as violative of the Due Process Clause of the Fifth Amendment;

(3) For such further or different injunctive and declaratory relief as the court may fashion in the interests of justice.

Respectfully submitted,

FISHER & PHILLIPS

BY: /s/ MICHAEL C. TOWERS

Michael C. Towers
(Ga. Bar No. 714800)

John B. Gamble, Jr.
(Ga. Bar No. 283150)

James J. McDonald Jr.
(Ga. Bar No. 489350)

*Attorneys for Roadway
Express, Inc.*

3500 First Atlanta Tower
Atlanta, Georgia 30383
(404) 658-9200

EXHIBIT B

September 7, 1984

Mr. Donald I. Cameron
 ORO Investigating Officer
 U.S. Department of Labor (OSHA)
 Jacksonville Area Office
 2747 Art Museum Drive
 Suite 17
 Jacksonville, Florida 32207

Re: Roadway-Hufstetler (STAA Investigation),
 Case No. 4-0280-84-503(405)

Dear Mr. Cameron:

This letter will confirm our telephone conversation of September 6, 1984 in which you indicated that you intend to recommend that the findings of the Secretary of Labor be in favor of the complainant in the above case. I understand that although you will present your recommendation to Supervisory Investigator, Leon P. Smith, neither Mr. Smith or the Solicitor's Office will make a final decision in the case before calling my office for further discussion of the issues. I would like an opportunity to meet with Mr. Smith here in Atlanta before the final decision is made.

From our conversation, I understand that you have not interviewed either Mike Titus, the St. Petersburg terminal manager, or Archie Jenkins, the Valdosta manager who made the decision to terminate Hufstetler. Instead, you have relied solely upon witnesses who have given conflicting sworn statements to you and to the company. For numerous reasons, I would like to discuss the facts of this case in more detail with Mr. Smith and a representative of the Solicitor's Office.

You further indicated in our September 6, 1984 conversation that you were unaware that the complainant would be automatically reinstated without a hearing if the Secretary's findings are in favor of the complainant.

STAA, Section 405(c)(2) provides that when there is reasonable cause to believe there has been a violation of the Act, the Secretary shall order reinstatement of the complainant prior to the filing of any objections to the Secretary's findings, and prior to any hearing on the record. On the other hand, the provisions of the STAA do not deprive a complainant of the right to a hearing when the Secretary concludes there is not reasonable cause to believe that a violation occurred. In that event, the complainant receives a full and fair hearing on the merits of his STAA claims for reinstatement and full back pay.

It is Roadway's position that the Secretary's issuance of a preliminary order of reinstatement prior to the conduct of a hearing on the record would constitute a denial of due process of law, in violation of the provisions of the Fifth Amendment to the United States Constitution. *See, e.g., Southern Ohio Coal Co. v. Marshall*, 464 F.Supp 450 (S.D. Ohio 1978). In the present case, there is no need to reach the constitutional issues presented by the preliminary reinstatement procedures of the STAA because there simply is not reasonable cause to believe that a violation of the STAA occurred.

Yours very truly,

FISHER & PHILLIPS

BY: _____
 John B. Gamble, Jr.

JBG:jly
 cc: Mr. Leon P. Smith

EXHIBIT C**UNITED STATES DEPARTMENT OF LABOR**

Section 405 Complaint Case No.: 4-0280-84-503

IN THE MATTER OF:

ROADWAY EXPRESS, INC./JERRY W. HUFSTETLER

SECRETARY'S FINDINGS AND PRELIMINARY ORDER

Pursuant to Section 405 of the Surface Transportation Assistance Act of 1982 (hereinafter, "STAA") (49 U.S.C. 2305), Complainant Jerry W. Hufstetler filed a complaint with the Secretary of Labor alleging that Respondent, Roadway Express, Inc., discriminatorily fired Complainant as reprisal for complaining about DOT safety violations, (breakdowns). Respondent denied the allegation. Following an investigation of this matter by a duly authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator, Region IV, of the Occupational Safety and Health Administration, pursuant to Section 405 of STAA, Secretary's Order 9-83, 48 F.R. 35736 (August 5, 1983), and CPL 2.45, Chapter X (March 8, 1984) finds that there is reasonable cause to believe the following:

1. (a) Respondent, Roadway Express, Inc., is engaged in interstate trucking as a part and portion of their business in Lake Park, Georgia. In the regular course of this business, Respondent's employees operate commercial motor vehicles in interstate commerce principally to transport cargo. Consequently, Respondent is subject to the STAA.

(b) Respondent, at all times material herein, has been a person as defined in Section 401(4) of STAA (49 U.S.C. 2301(4)).

2. (a) In April, 1977, Respondent hired Complainant Hufstetler to his position as a driver of a commercial motor vehicle, to wit, a tractor-trailer with a gross vehicle weight rating in excess of 10,000 pounds.

(b) At all times material herein, Complainant Hufstetler was an employee within the meaning of the STAA, in fact he was a driver of a commercial motor vehicle used on the highways in interstate commerce to transport goods and products and in that he was employed by a commercial motor carrier, and in the course of his employment, directly affected commercial motor vehicle safety (Section 401(2)(A) of STAA, 49 U.S.C. 2301(2)(A)).

3. (a) On or about February 7, 1984, Complainant filed a complaint with the Secretary of Labor alleging that Respondent had discriminated against him in violation of Section 405 of STAA (49 U.S.C. 2305(C)(2)(A)). This complaint was timely filed.

(b) The Secretary, acting through his duly authorized agents, thereafter investigated the above complaint in accordance with Section 405 of STAA (49 U.S.C. 2305(C)(2)(A)), and has determined that there is reasonable cause to believe that the Respondent has violated Section 405(a) of STAA.

4. On or about November 22, 1983, Respondent notified Jerry W. Hufstetler that he was discharged from employment as of November 22, 1983, principally because he allegedly had created a false breakdown, an act of dishonesty, on November 22, 1983. Respondent's evidence to support the discharge is conjecture. Complainant has presented evidence to support his innocence. Respondent had threatened to do anything they could to catch the Complainant doing something wrong, to get rid of him.

5. Complainant had a two year history of bringing vehicle safety problems to the attention of the Respondent and had complained to DOT and to elected public officials. These complaints constitute protected activity under the Act.

6. Respondent had warned Complainant and threatened to get him due to his excessive breakdowns due to Complainant's recognition of safety violations.

7. Respondent's termination of complainant's employment was discriminatorily motivated by Complainant's protected activity. Thus, Respondent's discharge was a violation of Section 405(a) of STAA (49 U.S.C. 2305(a)).

8. Complainant's backpay is to be calculated from the date of his discharge, November 22, 1983, up to and including the date he either finds new employment or refuses reinstatement with Roadway Express, Inc., whichever comes first. Backpay is to be calculated and paid at \$997.00 per week, which was Mr. Hufstetler's average weekly pay prior to his termination, plus 10% interest per annum on the entire amount owed.

/s/ ALAN C. McMILLAN

Alan C. McMillan

Regional Administrator

Date: January 21, 1985

ORDER

Pursuant to Section 405 (c)(2)(A) of the Act, the Secretary of Labor, acting through his agent, in accordance with the findings made herein, orders Respondent, Roadway Express, Inc., to immediately offer reinstatement to Jerry W. Hufstetler to his former position of employment with accumulated seniority; to compensate him for backpay in an amount based on the terms of

paragraph 8 of the Findings and to expunge from his personnel records any adverse references to his discharge or any protected activity.

/s/ ALAN C. McMILLAN

Alan C. McMillan

Regional Administrator

EXHIBIT D**UNITED STATES DEPARTMENT OF LABOR**

Section 405 Complaint Case No.: 4-0280-84-503

IN THE MATTER OF:

ROADWAY EXPRESS, INC./JERRY W. HUFSTETLER

**RESPONDENT'S OBJECTIONS TO THE SECRETARY'S
FINDINGS AND PRELIMINARY ORDER AND REQUEST FOR
A HEARING ON THE RECORD**

Comes now the Respondent in the captioned matter and, having been served with a copy of the Secretary's Findings and Preliminary Order in the captioned matter dated January 21, 1985, files this its Objections to the Findings and Preliminary Order within the time called for under Section 405(c)(2)(A) of the Surface Transportation Act of 1982, 49 U.S.C. § 2305.

Responding to the numbered paragraphs of the Secretary's Findings and Preliminary Order, Roadway Express, Inc., Respondent, states as follows:

1.

Respondent admits Paragraphs 1(a) and 1(b).

2.

Respondent admits Paragraphs 2(a) and 2(b).

3.

(a) Respondent does not have sufficient information to either admit or deny the allegations of Paragraph 3(a) and therefore, holds the Secretary to strict proof of the same.

(b) Without admitting the allegations of Paragraph 3 (a), the Respondent admits that the Secretary conducted an investigation of the Complaint and issued his Findings and Preliminary Order which states that he believes that there is reasonable cause to believe that the Respondent has violated Section 405(a) of the Surface Transportation Assistance Act of 1982. Respondent admits no more.

4.

Respondent admits that, on or about November 22, 1983, it notified Jerry W. Hufstetler that he was discharged from employment as of November 22, 1983, because he had created a false breakdown, an act of dishonesty, on November 22, 1983. The remaining allegations of Paragraph 4 of the Secretary's Findings and Preliminary Order are denied.

5.

Respondent denies the allegations of Paragraph 5.

6.

Respondent denies the allegations of Paragraph 6.

7.

Respondent denies the allegations of Paragraph 7.

8.

Respondent denies the allegations of Paragraph 8.

FIRST AFFIRMATIVE DEFENSE

The allegations of the Secretary in his Findings and Preliminary Order have been the subject of a final and binding arbitration proceeding under the collective bargaining agreement between the complainant's union

and Respondent. In arbitration the same factual issues raised by complainant in his STAA complaint and alleged by the Secretary of Labor in his Findings of Fact were raised and adjudicated. The arbitration panel found against Jerry W. Hufstetler and in favor of the Respondent. The Secretary of Labor should defer to the decision of the arbitration panel.

SECOND AFFIRMATIVE DEFENSE

So much of the Secretary's Order as mandates immediate offer of reinstatement prior to a hearing on the record violates Respondent's constitutional rights to a due process hearing on the record and a finding of a violation of the Act before such an Order enters.

THIRD AFFIRMATIVE DEFENSE

The Secretary of Labor is barred from seeking the requested backpay because the Secretary delayed one year from the time Hufstetler made his STAFF Complaint until he made his Findings of Fact and said delay was unreasonable under the circumstances.

WHEREFORE, Respondent having fully objected to the Findings and Preliminary Order and having requested a hearing on the record respectfully prays that:

(a) A final Order enter dismissing the allegations of the Secretary's Findings and vacating the Preliminary Order.

(b) The Secretary defer to the decision of the arbitration panel in favor of Respondent and against complainant.

(c) Afford Respondent all other relief to which it is entitled.

Respectfully submitted,

FISHER & PHILLIPS

FISHER & PHILLIPS
A Partnership Including
Professional Corporations
3500 First Atlanta Tower
Atlanta, Georgia 30383
(404) 658-9200

BY: /s/ MICHAEL C. TOWERS

MICHAEL C. TOWERS
JOHN F. GAMBLE, JR.
JAMES J. McDONALD, JR.

ROADWAY EXPRESS, INC.

Post Office Box 471
1077 Gorge Boulevard
Akron, Ohio 44309-0471
(216) 384-2321

BY: /s/ MICHAEL D. CULLINS

Michael D. Cullins

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31 day of January, 1985, caused a copy of the foregoing RESPONDENT'S OBJECTIONS TO THE SECRETARY'S FINDINGS AND PRELIMINARY ORDER AND REQUEST FOR A HEARING ON THE RECORD to be served upon the following individual by depositing a copy of said document in the U.S. Mail, postage prepaid:

ALLEN C. McMILLAN
Regional Administrator
U.S. Department of
Labor - OSHA
1375 Peachtree Street, N.E.
Room 587
Atlanta Georgia 30367

/s/ MICHAEL C. TOWERS
of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO. C85-997A

ROADWAY EXPRESS, INC., A DELAWARE CORPORATION,
PLAINTIFF,

v.

FORD B. FORD, UNDER SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
[SUBSTITUTED FOR RAYMOND J. DONOVAN,
SECRETARY OF LABOR, RESIGNED],
ALAN C. McMILLIAN, REGIONAL ADMINISTRATOR,
REGION FOUR, UNITED STATES DEPARTMENT OF LABOR,
DEFENDANTS.

DEFENDANTS' ANSWER

Come now defendants the Under Secretary of Labor, United States Department of Labor and Alan C. McMillian, Regional Administrator, United States Department of Labor, Occupational Safety and Health Administrator, by and through the United States Attorney, Northern District of Georgia, and respond to plaintiff's Complaint as follows:

1.

Paragraph 1 is admitted, except insofar as plaintiff contends that jurisdiction of this action arises under 5 U.S.C. §§ 701-706.

2.

Paragraph 2 of the Complaint is admitted.

3.

Paragraph 3 of the Complaint is admitted.

4.

Paragraph 4 of the Complaint is denied insofar as it states that Raymond J. Donovan is the Secretary of Labor, United States Department of Labor. Paragraph 4 of the Complaint is admitted in all other respects.

5.

Paragraph 5 of the Complaint is admitted.

6.

Paragraph 6 of the Complaint is admitted insofar as it identifies Messrs. Hufstetler, Titus, Jenkins and Webb as being employees of Roadway and states that Mr. Hufstetler was terminated by Roadway. Paragraph 6 is denied in all other respects.

7.

Paragraph 7 is admitted.

8.

Paragraph 8 consists of conclusory statements which require no response. To the extent that a response is required, Paragraph 8 is denied.

9.

Paragraph 9 is admitted.

10.

Paragraph 10 is admitted.

26

11.

Paragraph 11 is admitted.

12.

Paragraph 12 is admitted.

13.

Paragraph 13 is admitted insofar as it states that counsel for Roadway met with representatives of the U.S. Department of Labor on October 18, 1984, and that counsel for Roadway set forth his contentions during such meeting. Paragraph 13 is denied in all other respects.

14.

Paragraph 14 is admitted insofar as it states that Roadway has been denied access to confidential statements which were provided to the Department of Labor during its investigation of Roadway and that Roadway has been denied knowledge of the individuals from whom such statements were secured. Paragraph 14 is denied insofar as it implies such denial to be arbitrary and capricious. Paragraph 14 is denied in all other respects.

15.

Paragraph 15 is admitted.

16.

Paragraph 16 is admitted.

17.

The response of defendants regarding plaintiff's contentions in paragraphs 1 through 16 are incorporated by reference herein as the response to paragraph 17.

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18.

Paragraph 18 is admitted.

19.

Paragraph 19 is admitted insofar as it states that the U.S. Department of Labor ordered Roadway to reinstate employee Hufstetler in accordance with the provisions of the Surface Transportation Assistance Act. Paragraph 19 is denied in all other respects.

20.

Paragraph 20 is denied.

21.

Paragraph 21 is denied.

22.

Paragraph 22 is admitted.

23.

Paragraph 23 is denied.

Wherefore, the defendants respectfully request this Court to dismiss this action and grant such further relief as the Court may deem appropriate.

Respectfully submitted,

Larry D. Thompson
United States Attorney

/s/ J. WILLIAM BOONE
J. William Boone
Assistant United States Attorney
1800 United States Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30335
(404) 221-3707
Georgia Bar No. 067856

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO. C85-997A

ROADWAY EXPRESS, INC., A DELAWARE CORPORATION,
PLAINTIFF,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR;
ALAN C. McMILLAN,
REGIONAL ADMINISTRATOR, REGION FOUR, UNITED STATES
DEPARTMENT OF LABOR,
DEFENDANTS.

AFFIDAVIT OF HARRY D. WEBB

1. My name is HARRY D. "PETE" WEBB. I am employed by Roadway Express, Inc. as Manager, Labor Relations. I am headquartered in Atlanta, Georgia.

2. In my capacity as Manager, Labor Relations, I have knowledge of the discharge of Jerry W. Hufstetler, the arbitration of the discharge and the results of the arbitration. The arbitration transcript and award is attached to this Affidavit as Exhibit 1.

3. The Arbitration Committee at the Multistate (Level 1) hearing and the Arbitration Committee at the Area hearing (Level 2) which heard Hufstetler's grievance were each comprised of three representatives from motor carriers other than Roadway and three representatives from Teamsters Locals other than Hufstetler's Local 528. By contract, the decision of the Committee is final and binding on the parties.

4. I have knowledge of the National Master Freight Agreement (NMFA), the governing labor contract be-

tween Roadway Express, Inc. and the International Brotherhood of Teamsters which covers Hufstetler and his Local No. 528. Articles of the agreement pertaining to Hufstetler's discharge and his grievance and arbitration are attached to my Affidavit as Exhibit 2.

5. I have knowledge of the requirements of the NMFA and the staffing needs for road drivers at the Lake Park, Georgia Terminal where Hufstetler was domiciled. If Hufstetler were reinstated as a road driver, under the terms of the NMFA a driver currently in the employ of Roadway at that terminal would be laid off to make a place for Hufstetler. A reinstatement of Hufstetler to his former position would also impact the opportunities for drivers who may be on layoff because of lack of work to be recalled. This would have significant adverse impact on those drivers. The reinstatement of Hufstetler contrary to the arbitration award and affecting other Teamster drivers' livelihoods before an opportunity for Roadway to be heard and defend its position would adversely impact the morale of the bargaining unit and management work force.

6. I presented Roadway's arbitration case concerning Hufstetler's discharge to the Multistate and Area Grievance Committees. As can be seen from the transcripts, Mr. Hufstetler, in addition to denying that he had intentionally caused a breakdown and committed the act of dishonesty for which he was discharged, affirmatively asserted that his discharge was motivated by retaliation for prior breakdowns and complaints. The Arbitration Committee, in denying his grievance, rejected this claim and defense.

I have freely given this Affidavit, and, to the best of my knowledge and believe, it is true, accurate and correct.

/s/ HARRY D. WEBB

Harry D. Webb

Sworn to and subscribed
before me this 31st day
of January, 1985.

[Signature Illegible]

Notary Public

My Commission Expires:
Notary Public, Georgia State at Large
My Commission Expires May 24, 1986

EXHIBIT 1

By reason of your conduct as described below, it is necessary to issue this notice of:

Warning — Suspension — Discharge — X
on

MO DA YR

11 22 83 Location: St. Petersburg, FL (713)

You violated our policy (or contract) by: An act of dishonesty as provided for in Article 45 of the Southern Conference Area Over-The-Road Motor Freight Supplemental Agreement to the National Master Freight Agreement by creating a false breakdown at the St. Petersburg, FL. terminal. Due to the above incident you are hereby discharged.

Subsequent violations will result in your receiving more severe disciplinary action up to and including discharge**

Previous Timely Warnings:

09-26-83 — Failure to follow inst.

08-02-83 — Failure to follow inst.

05-23-83 — Failure to follow inst.

This letter was discussed with:

Name: [Illegible] Date: [Illegible]

Supervisor: [Illegible]

Employee: [Illegible]

/s/ A. C. JENKINS

A. C. Jenkins

Relay Manager

EXHIBIT 2

GRIEVANCE REPORT

Local Union No. 528

Company employed by: Roadway City: Lake Park, Ga.

Kind of work: Road Driver X City Driver Other

Date Grievance Happened: 11-22-83 Date turned into

Steward 11-27-83

Stewards name receiving grievance: Gene Walker

CAUSE OF GRIEVANCE

Protest letter of discharge dated 11-22-83, in which I am accused of an "act of dishonesty" by "creating a false breakdown at the St. Petersburg, Fla. terminal". This accusation and discharge is totally without justification and thus in violation of Article 45 of the National Master Freight Agreement as it is "without just cause". I am therefore requesting that I be reinstated and paid for all time lost.

That all employees in the bargaining unit be made whole for any loss of pay or other benefits lost on account of company's alleged action in violation of the contract.

1. An employee may write his own grievance or he may have his steward or the Chairman of the Shop Committee write it for him. Make and keep one copy for yourself, give three copies to the Shop Steward.

2. When the grievance has been written, it should be given to the Steward or the Shop Chairman for handling.

3. Grievance should be written in a manner that can be easily understood.

4. By presenting the grievance, the employee grants to the Union complete authority to present, negotiate and bargain regarding this grievance and agrees to be bound by such disposition of the grievance as may be made or agreed to by the Union or it's designated representatives.

Employees Name: J. W. Hufstetler

/s/ J. W. HUFSTETLER
Signature of Employee

Please fill out all information so that we may contact you concerning your grievance if necessary.

P.O. Box 204
Street Address
Lake Park, Ca. 31636
City and State Zip Code
904-973-6058
Area Code Phone Number

STEWARDS REPORT OF GRIEVANCE

Date received: Nov. 27, 83 Date taken up with employer:
_____ Date of final settlement: _____

DISPOSITION

Stewards Signature _____
Approved by _____

EXHIBIT 3

who must obtain medical attention, shall receive pay at the applicable hourly rate for the balance of his regular shift on that day. An employee who has returned to his regular duties after sustaining a compensable injury who is required by the workmen's compensation doctor to receive additional medical treatment during his regularly scheduled working hours shall receive his regular hourly rate of pay for such time.

In the event that an employee sustains an occupational illness or injury while on a run away from his home terminal, the Employer shall provide transportation by bus, train, plane, or automobile to his home terminal if and when directed by a doctor.

The Employer agrees to provide any employee injured locally, transportation at the time of injury, from the job to the medical facility and return to the job, or to his home if required.

In the event of a fatality, arising in the course of employment, while away from the home terminal, the Employer shall return the deceased to his home at the point of domicile.

ARTICLE 15

Military Clause

Employees enlisting or entering the military or naval service of the United States, pursuant to the provisions of the Military Selective Service Act of 1967, as amended, shall be granted all rights and privileges provided by the Act. The Employer shall pay the Health and Welfare and Pension Fund contributions on employees on leave of absence for training in the military reserves or National Guard, but not to exceed fourteen (14) days, providing such absence effects his credits or coverage for Health and Welfare and/or Pensions.

ARTICLE 16**Equipment and Safety****Section 1.****Safe Equipment**

The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition, including but not limited to acknowledged overweight or not equipped with the safety appliances prescribed by law. It shall not be a violation of this Agreement where employees refuse to operate such equipment unless such refusal is unjustified. All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. After equipment is repaired, the Employer shall place on such equipment an "OK" in a conspicuous place so the driver can see the same.

Section 2**Dangerous Conditions**

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment. The term "dangerous conditions of work" does not relate to the type of cargo which is hauled or handled. [End of Exhibit Page 57]

[Beginning of Exhibit Page 119] to the Southern Conference Area Grievance Committee at any time for final decision, and such Southern Conference Area Grievance Committee shall be convened on seventy-two (72) hours notice to handle matters so referred.

Section 4**Examination of Records**

The Local Union, the State or Multiple State Committee or the Southern Conference Area Grievance Committee shall have the right to examine time sheets and any other records pertaining to the computation of compensation of any individual or individuals whose pay is in dispute, or records pertaining to a specific grievance.

Section 5**National Grievance Committee**

Grievances and questions of interpretation which are subject to handling under the provisions of Article 8 of the National Agreement shall be referred to the National Grievance Committee in accordance with such Article 8.

Section 6**Committee Expense**

Any meeting room expense involved in such proceedings shall be shared equally between the parties to this Agreement.

ARTICLE 45**Discharge or Suspension****Section 1**

The Employer shall not discharge, suspend or take any other disciplinary action as respects any employee without just cause, but in respect to discharge, suspension or other disciplinary action shall give at least one warning notice of the complaint against such employee to the employee in writing by Certified Mail and/or in person and a copy of same to the Union affected, by Certified Mail; except that no warning notice need be given to an employee before he is discharged if the cause of such discharge is dishonesty, drinking of or under the influence of alcoholic beverages

or narcotics while on duty, and/or the failure to submit to a sobriety test upon request if the employee appears to be under such influence or carries or permits the carrying of drugs or narcotics on his person or equipment that is prohibited by state or federal law, or drinking alcoholic beverages on company property, or recklessness resulting in serious accident while on duty, or the carrying of unauthorized passengers, or the failure to report an accident, or willful damage or destruction of company property or equipment, or engaging in unprovoked physical violence while on Company property or while on duty. The warning notice as herein provided shall not remain in effect for a period of more than six (6) months from date of said warning notice. All warning notices, discharges, suspensions, or other disciplinary action must be by proper written notice to the employee and the Union affected. Any employee may request an investigation as to his discharge or suspension. Should such investigation prove that an injustice has been done an employee he shall be reinstated. The State or Multiple State Grievance Committee and the Southern Conference Area Grievance Committee shall have the authority to order full, partial or no compensation for time lost. Appeal from discharge, suspension or warning notice must be taken within ten (10) regular working days by written notice, and a decision reached within fifteen (15) days from the date of discharge, suspension or warning notice. If the employee involved is not within the home terminal area when the action of discharge, suspension or warning notice is taken, the ten (10) regular working day period will start from the date of his return to the home terminal, provided the employee returns home at the approximate time he would have arrived home if he had completed his tour of duty. If no decision has been rendered on the appeal within fifteen (15) days the case shall then be taken up as provided for in Article 44 of this Agreement.

Section 2

Any employee discharged away from his home terminal shall be provided the fastest available transportation to his home terminal at the Employer's expense.

Section 3

In all cases where an employee is unable to report for work at the regular starting time, for any reason, he shall immediately notify the Supervisor on duty. Failing to so notify the Supervisor on duty he shall not be reinstated upon his return to work unless a reasonable explanation is furnished to the Employer. The first violation of this Article shall result in a warning notice to the employee. On the second such violation of this Article employee may be disciplined or discharged. Habitual absenteeism will be grounds for discharge, after proper notice to the employee and the Union.

EXHIBIT 4

Case No. 38.	Local 528 v. Roadway
Operators Committee	Union Committee
Scarborough	Morgan
Kinney	Lark
Skaggs	McConnell

PROTEST DISCHARGE 11/22/83 (Jerry Hutstetler)
Road

Company state your name and proceed.

Pete Webb for the company. I'll read the discharge letter to Mr. Hutstetler. On 11/22/83 at St. Petersburg, Florida you violated the contract by an act of dishonesty provided for in Article 45, of the Southern Conference Area Over-the-Road Supplemental Agreement to the National Master by creating a false breakdown at the St. Petersburg, Florida terminal. In view of this you are hereby discharged. What this involved, Mr. Hutstetler was observed pulling into the St. Petersburg yard with the marker lights on his tractor working. 2 city employees at the St. Petersburg terminal said that all the lights on the unit were working and I have those statements here for the Committee. One from Mr. Doug Kimball who is a city employee at Roadway Express in St. Petersburg, Florida. Says after Bill Rativitch (sounds like) perform the drop and hook the unit was left at the dock. Ray Kimball, taking the last freight from the trailer in order for it to be empty. After Ray emptied the unit he pulled the unit away from the door around to the terminal to the front of the terminal. The lights on the unit were on. I told the terminal manager the unit was ready to go and he noticed no lights out.

Another statement also says discussion with Bill Rativitch a city employee Roadway at St. Petersburg, Florida. When Jerry Hutstetler arrived in St. Petersburg on 11/22/83 Bill Rativitch performed the drop and hook. He dropped the tractor 48780 from the trailer and hooked it to another trailer 77396. Bill Rativitch said to the best of his knowledge all the lights were working on the trailer. He said he performed a pretrip inspection on the unit. His pretrip includes checking lights and bumping tires. Bill Rativitch has been employed with Roadway since June 1979. He stated he has been a qualified driver for 20 years and he had made numerous drops and hooks and pretrip inspections. He stated that if the lights on the tractor had not been working he would have noticed it. When Hutstetler came into St. Petersburg after he was then redispached after these hook ups we just referred to was made, he went to his unit and he was seen with the terminal manager leaning over in the cab and then at that point the tractor marker lights went out, and I'd like to read the terminal manager's statement into the record also and he says: Road drover Hutstetler came into the St. Petersburg terminal with a load of inbound. I, Mike Titus, was working inbound at the time. Due to the previous problems involving this driver I knew all the lights had to be working or he wouldn't go. I saw the unit pull into the yard and the tractor marker lights were working. Hutstetler stopped the unit and came into the office. I asked if he would go to lunch or wait for the drop and hook and then go. He said he would wait. I then had my city man drop his inbound load to the dock and took the tractor to the empty trailer that he was going to leave with. I told the city man to make sure all the lights were working. After the hook the city man pulled the unit around front. Again I saw the unit when it was in front of the terminal, the lights on the tractor were working. The city man said everything was okay so I gave the dispatch to

Hutstetler and he walked out to the unit. I then walked to the dock and from where I was on the dock I saw Hutstetler get into his unit and lean over the driver's seat towards the passenger door. It was at this time that I saw the marker lights on the tractor go out. I didn't pay much attention beyond that point since I thought he was just checking the unit or doing something with the CB radio. Shortly after that he came back into the terminal and said he had no marker lights and at this point in time gave me his M11 writeup book. I went out to the truck and tried all the lights and couldn't get them to work. I came in and called the vendor. He came over and found a wire that runs along the passenger door was unplugged. As he says in the statement the vendor was called to the terminal. We also have a statement from the vendor and Mr. (inaudible) Pierson of L & S Truck Service and it says that on 11/22/83 at 1:00 A.M. I was called to Roadway Express at 10800 Canal St. Largo, Florida to fix the marker lights on the tractor number 48780. I checked all lights and found that the wire which runs along the passenger door to be unplugged. It was apparent to me that it was unplugged as it is impossible for it to come unplugged due vibration. On the bottom he says connector plug did not have any dust on it which is as if it had been disconnected. When the wires were replugged all the lights including the dome light were working. Hutstetler made no writeup on his M11 upon arriving at the St. Petersburg terminal until after being dispatched back to Valdosta and then when the lights went out he did turn and come back to the terminal and turn in his M11 writeup and we have that M11 here for the Committee. We also have other M11s on the same truck prior to this and after this with no problems with the lights and those I'll pass up to the Committee for inspection. After the vendor replugged the wire Hutstetler pointed out a marker light on the trailer that was flickering. The vendor bumped the marker light and it stayed on and no repairs were necessary. I also have gentlemen here-

we found a plug wire in the middle of the tractor that's the same type plug that we are talking about here. It runs from the cab down to the interior of the cab and along the top of the cab and down beside the dash and this is the plug in question and it pulls apart but I don't see any way that anybody could assume that the plug was vibrated apart. Is that the plug off your tractor?

(inaudible)

I also have a picture here that shows the rightside door of the tractor and where this wire runs in relation to the door and the tractor. I'll pass that picture up to the Committee.

This is Earl Parker for local 528. The picture in question there, the local union was not aware of the picture, was not offered those pictures.

Have you seen them?

I have not seen it. This is the first I knew of it.

At any rate the wire runs down the right side of the tractor. The trailer that's in reference to in his M11 writeup that Mr Hutstetler made 77396 is the unit that Hutstetler brought from St. Petersburg to Valdosta. The fact that Hutstetler alleges he didn't write up the defect when he arrived at St. Petersburg terminal due to the dome light being out and darkness yet then writes up the M11 under the very same conditions when the dome light was out and in darkness, when he was dispatched on the clock was an indication that he was not following the proper procedure no matter how you look at it. We also gentlemen for the Committee, Mr. Hutstetler applied for unemployment compensation and that case was heard and denied at the Unemployment Board. We have a copy of that here for the Committees review and we think that Mr. Hutstetler has deliverately created a breakdown and collected delay time and we ask the claim be denied. That's our case subject to rebuttal.

Union.

This is Earl Parker for Local 528. I'd like to make known on the record that Mr. Jerry Hutstatler is here in his behalf to answer any questions or give any testimony in his behalf. I also would like to pass out to each one of the Committee . . .

Off the record telephone. Continue union.

Gentlemen, I have some stuff here that I would like to pass out to the Committee, stuff here from 1 through 12, the company is going to use as exhibits — I mean the union is going to use as exhibits to try to go through the case.

Gentlemen, this is Pete Webb for the company. There is one exhibit in that which is a polygraph test taken by Mr. Hutstetler at his own time with nobody agreeing to it from the company and nobody present for the company and I object to it being a part of this case.

This Earl Parker for local 528. We offered the company the right to work out a situation with the polygraph test and the company refused.

We have the right because the Committee has refused to recognize a polygraph test.

We'll take out that portion.

Number 12 exhibit Joe, the last exhibit.

The very last?

Right, yes, sir.

Pass it back up there.

All right, you should have 1 through 11 exhibits for the local union. First of all I would like to read the grievance on record. This is Earl Parker local 528, grievance for Jerry Hutstetler, discharged, asking to be reinstated with full benefits and paid. Protesting letter of discharge dated 11/22/83 in which I am accused of an act of dishonesty after (inaudible) a false breakdown at St. Petersburg, Florida terminal. This occurrence after (inaudible) is totally without justification and this is in violation of Article 45 of the National Master Freight Agreement as it is without just cause. I am therefore requesting that I be reinstated

and paid for all time lost. That's where you go to union's exhibit no. 1. Mr. Hutstetler, to prove a point, had had a runin with the terminal manager prior to his discharge down in St. Petersburg. I would like for you to if you would turn to the last page in this exhibit no. 1 (turning pages) It's the last letter Joe on exhibit 1. Mr. Hutstetler sent this letter to also to the International Brotherhood of Teamsters and Teamsters Local 528 and (inaudible) Roadway Express, Akron, Ohio. Dear Sir: The purpose of this letter is to make a formal complaint against the terminal manager in St. Petersburg, Florida as a result of his making a threat against my life and safety. On 9/4/83 I was dispatched to St. Petersburg, Florida. Upon arrival at the terminal I was relieved of duty for 1 hour and given a P&D unit and ordered to go eat. On my way back to the terminal the water hose busted. I called the dispatcher at Lake Park, Georgia and informed him of the problem and told him where the unit was. He put me on hold and called the St. Petersburg terminal. After a few minutes he came back on the line and gave me the number in St. Petersburg and instructed me to call them and give them my location. The terminal manager, Mike Titus answered the phone and said: Hutstetler, what is your G . . . D . . . problem. I told him that I didn't have a problem, the truck had the problem and that he had a busted water hose. He then said I am sick of your shit and I'm going to personally see to it that you get yours then he hung up the phone on me. I immediately called the dispatcher in Lark Park, Georgia and asked him to turn on the tape recorder. I then repeated to him what the terminal manager had said to me when I had called per his instructions in order to report the breakdown. I also told the dispatcher that I considered this to be a threat against my life and safety. The relay manager now has his tape recorder. When I returned to the terminal Mike Titus came over to the truck and again told me that I am going to personally see to it that you get yours. He repeated this statement several times but never

would be specific as to just exactly what he means. If I were in your position I would see that he got his and give him his pink slip and wish him better luck on his next job. Also gentlemen, we received a letter from Mr. Norman Goldstein for our local union to investigate this letter to Mr. Hutstetler. Jerry received a letter also from the International which was Norm Goldstein to investigate it. We sent Mr. Goldstein a copy of the front letter on the front page a reply to Mr. Hutstetler's letter. Dear Sir and Brother: Brother Hutstetler is a road driver domiciled at Roadway Express Valdosta, Georgia. The investigation of this complaint indicated that he was told something to the effect that the company would be watching him in an attempt to terminate him. This incident occurred at the Roadway terminal—it's supposed to be St. Pete not Tampa, Florida. Brother Earl Parker, assistant business agent for local a528 had attempted to talk to the terminal manager in St. Pete, Florida but he refused to talk to Brother Parker regarding this matter. Brother Parker did talk to the district manager and his position is that the local union 528 does not need to have any discussion with the terminal manager in St. Petersburg. Brother Parker has informed Roadway Express that local 528 does not and will not condone such harassed tactics. Local 528 will continue to use any and all legal means as local 528 does for all its members to protect and represent Brother Hutstetler. We sent this letter to Mr. Goldstein—we also sent a letter to Jerry Hutstetler that we were in the process of investigating the situation.

In the beginning like the letter says, I did talk to Mike Titus on the phone from Lake Park, Georgia and Mike Titus was not—I told him who I was and he would not discuss the issue over the telephone—he said he had to get with his district manager before he would talk to me. In the meantime I talked to the district manager and what the letter said to Mr. Goldstein the district manager did tell me

that I didn't need to have any discussion with the terminal manager on this situation. That the company would take care of it. So getting back down to exhibit no 2, this is the terminal manager's statement that Pete Webb read out—me and Archie Jenkins was present when these statements was made. I went down Tuesday of last week and these statements was made in my presence from the terminal manager and the 2 union people and the vendor. At this time—on 11/22/83 road driver Hutstetler came into the St. Pete terminal with the load of inbound. Mike Titus was working inbound at the time. Due to the previous problems involving this driver I knew all the lights had to be working or he would not run. I saw the unit pull out into the yard and the tractor marker lights were working. Hutstetler stopped the unit and came into the office. I asked him if he wanted to go to lunch or wait for the drop and hook and then go. He said he would wait. I then had my city man drop his inbound load to the dock and hook the tractor to the empty trailer he was going to leave with. I told the city man . . .

Earl, I already read it into the record.

All right, let me get on to the point then. On this situation here I asked Mike Titus where did he see that the lights was out dealing with Mr. Hutstetler. We went out on the dock and Mike Titus showed us where he was standing when he seen Mr. Hutstetler leaning over in his truck as he stated in his statement. We took a picture of where the—if you see in the picture there—between the trailer and the terminal here there is an opening right there. Mike Titus—this is a porch here that leads off into the yards where you have to go into the terminal—Mike Titus was standing approximately 45 feet from the tractor and looking in there and he claimed that he seen Jerry Hutstetler lean over. He assumes, again assumes that Jerry Hutstetler was messing with the lights or whatever. We feel like Mike Titus from that distance from where the tractor should

have been and the picture, there is no way in the world that he could see exactly what Mr. Hutstetler was doing. We feel like this statement is void saying that he seen Mr. Hutstetler bend over and again he assumed that Mr. Hutstetler pulled the wires or whatever.

The other statement from the 2 union people also Pete read into the record and I won't go read them again. The guy that hooked the trailer and tractor up and left it at the dock, he has been employed by Roadway since June 1979, stated he was a qualified driver for 20 years. The normal practice as far as the dock person, the regular dock man has not the standards to go out and pretrip a truck for a road driver. That's not the policy of a standard city man, dock man operations, that's for a (inaudible) or a fuel man but we feel like this man was not qualified to do all this and furthermore it is not his job. The other man in question that pulled the truck away from the dock, we talked to him and he stated that he pulled the tractor and trailer away from the dock, the lights was burning when he brought it around to the terminal, around to the door that the picture shows. And again, he is saying that as far as he knows he noticed no lights out. The lights could have went off when he brought the trailer around the dock, I don't know. He did not look at the trailer again once he pulled it around on the side of the door to see if the lights was burning. He got out of the truck, walked up the steps into the terminal and didn't even look at the tractor and trailer when he parked it on the side of the building. As far as the vendor is concerned, in his statement, he did indicate he came out there to fix the lights on Jerry's tractor. He also looked at everything, went under the hood, looked at the fuse box and he looked at some other wires trying to figure out why the lights wasn't burning. He also, like he said in his statement, he did find out the wire unplugged and plugged it back up and then all of a sudden the lights came on. And again gentlemen, there is no proof to the state-

ment that Roadway—the statements that they are making towards Mr. Hutstetler that in any way that he pulled that plug out, they are assuming, that's what he done. Also, in a meeting at exhibit no. 6 that you have in front of you—meeting with Roadway, Valdosta, Georgia, time 1:30 P.M. December 14, 1983, present at the meeting was Archie Jenkins, relay manager and DeWitt (inaudible). The union people present Earl Parker, Gene Walker, Odell Moore (sounds like) the 2 job stewards and Jerry Hutstetler. The purpose of this meeting was to discuss

END OF TAPE

CONTINUE WITH CASE NO. 38. Union.

The purpose of this meeting was to discuss Jerry Hutstetler's discharge. This was a statement by Bob Steele, road driver, Roadway Express, Valdosta. Bob Steele on 11/22/83, Bob stated that he was going north and Jerry was going south about 45 or 50 minutes from the terminal. A Roadway driver was coming out of the rest area, A Carolina driver was talking on the CB that a Roadway driver marker lights was not working. Mr. Steele said that is was not him and the Carolina driver said it was the southbound driver whose lights were out. At that time Jerry noticed that he was talking about him and Jerry checked to see if his lights was working. At that time Jerry looked out on the right side and thought that his lights was burning. Jerry said a question to Mr. Bob Steele—how long has Bob drive a road (inaudible) Bob: about 5 years. Jerry: can a road driver set in the driver's seat and reach over and raise or lower the other window. Bob said no. Gentlemen, here we went out and investigated some tractors—we went out and investigated 3 different tractors of the same type at random. There is no way in the world that you can set in that seat and raise that window down. You have to get out of that seat and get over to raise the window down or whatever you're gonna do. Even the indica-

tions that the company claims that there was a possibility that Jerry pulled the plug out. You have to get out of that seat to be able to get over to the right side. Jerry: can a road driver make a marker light go out on the trailer without him getting on top of the tractor? No. This is where that the mechanic Jerry was trying to refer had to get up on top of the tractor to fix the marker light on the trailer that was out. Archie Jenkins: Bob, can a person make the light go out by putting a pen in the wire? Bob said yes. Archie: was the marker light out on the trailer? Bob couldn't see because of the trees. Jerry: can a loose wire be out from under the dash on a tractor? Bob said yes. Jerry: is it unusual to have a wire out from the dash of the tractor? Bob said no. The reason why Jerry asked this question is due to the fact that the 3 tractors that we did investigate down there on this date on December 14, 1983, had loose wires on the right side—inside the cab.

Does the marker light wire one of them?

Yes, sir.

Now, let me ask a question. Which marker light are you talking about Earl? These were bob-tail tractors?

No, these was road tractors, plain (inaudible) 48 series.

You are saying that this same light that we are in discussion with here was loose on the tractor that you looked at?

Right. All 3 of them.

(inaudible) No, none, sho wasn't.

They were plugged together . . .

They were plugged together hanging out.

That's what I'm trying to get.

I'm not arguing about the plug. They was plugged up but they was hanging out on the right side, and again some of them had plugs that wouldn't have even had a plug plugged into them. Jerry also asked Bob have you ever known me to deliver the damaged company equipment? Bob said no. Jerry asked do you ever drive a piece of equipment where marker lights and other things are wrong

with it? Bob said yes. Jerry questioned about the DOT violation. Have you ever drove equipment that you know was in violation of DOT regulations? Bob said yes . . .

The next exhibit no. 7 is another statement given by R. B. Fortwood (sounds like) for Jerry Hutstetler, also he was present at the time these questions were asked and also Archie Jenkins and myself. How long have you been a driver? Fortwood: 35 years.

How long have you drove a road (inaudible)? Fortwood, about 5 years. Jerry: can a driver raise the window down or up without getting out of the seat? These are questions he is asking Mr. Fortwood. No. To raise a window down or up the person would have to get out of the seat. This is the statement Mr. Fortwood said. Mr. Fortwood stated that he had ran with Jerry for 2 years and had not known Jerry to do any dishonest act. Jerry: have you ever been given orders to drive vehicles that were in violation of the DOT regulation? Fortwood said yes. Have you ever went to the yard and asked—checked out other equipment and the mechanic did not repair the tractor or trailer? Fortwood: yes, it is not unusual to find this. Have you ever known me to be dishonest? Fortwood said no. Jerry: did you tell them about your answers to the questions before meeting? Fortwood no. Jerry asked Mr. Fortwood this question to prove that we did not talk to Mr. Fortwood prior to the meeting about questions that we were gonna ask or Jerry was gonna ask.

Exhibit no. 8. December 14, 1983 statements of Mr. Holbrook for Jerry Hutstetler. Mr. Holbrook has known of Jerry working on headlights on tractors on a trip (inaudible) when he had to repair headlights. This took about 30 minutes. Jerry used (inaudible) knife to repair the wire. Jerry did not have tools at the time to repair the equipment. Jerry carried tools sometimes in the past like tape and a knife but when Mr. Smothers dispatched him with trailers with a broken spring on it and told Jerry that he

would dispatch him with broken springs on it and make him drive the equipment if he had been on duty. Jerry quit carrying tools about 2 months before Jerry was discharged he started to repair equipment. Jerry is not required to make any repairs to equipment under this contract. The reason why this question was asked is usually because Mr. Holbrook was present at the time that Jerry has fixed equipment, a head light on the tractors. Jerry has made numerous repairs on tractors to prevent a breakdown so we can't understand why all of a sudden he is doing something dishonest and by some of these repairs that he had made in the past that he could have got lots more costs as far as the breakdown from the company on these particular breakdowns that he repaired himself and didn't cost the company a dime. Jerry: This is unusual to be dispatched with bad equipment when you are dispatched? Holbrook no. Jerry: is it unusual for a mechanic to repair equipment when you are dispatched? Holbrook said yes. Jerry: in the past 7 years that you have know me have you ever known me to deliberately create any form of a breakdown? Holbrook said no. Jerry: have you ever know me doing any act of dishonesty? Holbrook said no. Jerry: can a driver raise or lower the window without getting out of his seat? Holbrook said no. To raise the window down or up you would have to get out of your seat. Jerry: have you ever repaired equipment on the road? Holbrook said yes. Jerry: have you ever seen a loose wire in equipment hanging down? Holbrook says yes. Archie Jenkins: have you ever seen a loose wire on the right side of the other tractor? Holbrook said no. Jerry: will a driver drive a truck with a dome light on it — on in it on in the tractor? Holbrook said no. Holbrook stated that if he thought that Jerry made a dishonest breakdown that he would not have came down on Jerry's behalf. He also said that Jerry did not talk to him before the meeting about anything that was talked about in the meeting today. Gentlemen, when I read out Jerry's name that's where Jerry is asking the questions.

Exhibit no. 9. This is a statement from Willie Rogers (sounds like) for Merry Hutstetler 12/14/83. Mr. Rogers was not present at the time at the terminal. Willie Rogers came by my office and my secretary took his statement down. The only thing he is doing is saying the same thing Mr. Holbrook said in his in exhibit no. 8. about him and Willie being together when Jerry done some repairs on equipment. Are you saying read it? Okay.

By exhibit 10 statement of J. C. Cooley, he is mechanic, job steward at the shop. J. C. Cooley is a job steward for Lake Park Roadway terminal. Trucks are rewired at other terminals also when vendors work on trucks, wires they could vary on all equipment, due to the type of repair that was made and where the repairs were made. J. C. Cooley did not have any knowledge of any rewiring on the tractor in question on the day of the Hutstetler breakdown. We asked Mr. Cooley these questions, due to the fact that some of the wires that's in some of these tractors the vendors or mechanic to whatever need to suite them at the time they repair them. They could run straight, wire them together where there wouldn't be no connection plugin or they could fix it properly where there would be a plugin type connection or wire it anyway they wanted to when they get the equipment on the road.

Also there is statement in exhibit no. 11 of G. D. Walker. He is the job steward, road driver steward. These are tractors in random that we checked out on the yard there on 12/14/83. Tractor no. 48083. This will acknowledge that on this date, I Gene Walker, checked this tractor in reference to wiring in question which was a factor (inaudible) connection bounded on the passenger side of the tractor. The wire was exposed from the dash panel and had no clips or lock joints devises inside the connection. Thus I feel like under these set of circumstances the connector could have been disconnected due to the vibration of the vehicle over many miles or normal opera-

tion. Tractor 4859. This tractor was checked by myself also in reference to the same problem. The wiring in question same as above in reference to the connection. Had a clip or lock joint type connection and could not be separate by hand. On this particular tractor Mr. Jenkins himself got up in the tractor, tried to disconnect the wire in question, it had a lock type connection to it and he couldn't pull it apart. That's the reason why we went on to other tractors. Tractor no. 48111 had wires hanging down or exposed on the passenger's side but this was not the same wire previously mentioned on tractor no. 480083 and 48519. These three tractors also 48000 series was chose at random.

Gentlemen, all the investigation that I have done on this case I feel that, the local union feels that Mr. Hutstetler was discharged improper. We feel that Mr. Hutstetler did not do nothing dishonest and again like I said awhile ago we feel like the company is making statements here that they think Mr. Hutstetler done this. We feel like Mr. Hutstetler did not do anything wrong. We feel like Mr. Hutstetler's breakdown was legit and the total breakdown time was I think \$6.40 something cents involved. I don't think a man would lose a job of \$35 or \$30,000 job for \$6.50. Again, the company is assuming that Hutstetler pulled these connections out, they do not have proof that Mr. Hutstetler done it, the didn't catch him doing it. We feel like the discharge is improper. Mr. Hutstetler have you got anything you would like to add?

I got a lot I want to add to that.

Mr. Hutstetler, give your name for the record, please.

This is Jerry W. Hutstetler. I have worked for Roadway Express for about 7 years. I got so much to say I don't know where to start. But I'll—about 2 months prior to this when Mike Titus expressed to me that he was going to personally see to it that I got mine. Now if you could see this fellow and be around him and know him, he is not like

the average person, he is like a spoiled kid you know, and only a spoiled kid would come up to a grown person and say I'm going to personally see to it that you get yours and point their finger in your face. If I told somebody that I would be expecting them to whop my ass right then and there but that is the mentality, the childish emotional problem he has got, so he's got a problem. I got a copy here of my W-2 form. I made \$48,829.67 last year and not one dime of that money was stole or even one penny was got through any act of dishonesty. I work 7 days a week everyday for the last 3 years. I have pulled 14 to 18 different trailers per week. I've been off less than 15 days in the last 3 years. I've drove more miles each year in the last 3 years than any other driver in Lake Park. I have over 7 months accumulated time that I can mark off and like I said before, not one penny of that \$48,000 was made through any act of dishonesty. I have not put even one scratch on Roadway's equipment and drove almost a million miles without an accident, and in reference to lights problems. I point out there's 46 lights on a Roadway 45-foot tractor trailer combination to go out and cause a breakdown. There are 18 tires, 18 wheels and 18 wheel bearings, 360 lug bolts and nuts that could cause a breakdown and probably several hundred feet of wiring and wiring connections that could cause a breakdown. So you got all these problems to contend with on the truck and there was reference made to the marker light on the trailer you know, well the mechanic had to climb up on the roof of the tractor to take that light out—well he took it out halfway and it flickered on and off, he would push it back in and it would go out, you pull it back out and flicker on and off push it back in it would go out. He had to take this light completely out in order to make repairs. He took it out and scrapped the connectin and put it back in and it stayed on. There is no way that I could have made that light go out unless I climbed out up there and took it

loose. You just can't make a light go out you know. I don't know of any way to make one out. Now this incident happened 2 months ago when Mike Titus said he was going to personally see to it that I got mine I broke down and he told me this on the phone, well I got upset and I called the relay back and told them to turn the tape recorder on and repeated everything that he said and the next day I asked the dispatcher what he did with the tape and he said he gave it to Archie Jenkins said it was on his desk, which is the relay manager. So there is no doubt that Archie Jenkins knew about this situation prior to him discharging me and the point made of that is that he shouldn't have ever discharged me in the first place cause he knew about the situation in Lake Park all along. But getting back to St. Petersburg. After I hung up the phone the dispatcher told me to walk on back down to the truck and he would call and make sure that he was sending a mechanic cause I didn't know what he was gonna do, he just hung up the phone on me. So I walked on back to the truck and they sent a girl that worked in the office in her car to pick me up. Well, when I got back to the terminal the mechanic was working on the lights on the trailer see, and I was standing beside the tractor and he come over there again and pointed his finger in my face and says I'm going to personally see to it that you get yours. Now, he says you've got more breakdown time than other terminals got running time. I said that's not true and it's not you know. I says you don't know what you're talking about, you don't know who you are talking to, you can't put me in the same classification of a regular driver, you know, I work everyday. I drive many more mile than anybody else, I'm certain to have more breakdowns. The average bid driver pulls 6 trailers a week. I pull 14 to 18 different trailers. You've got a lot more to contend with everytime you hook to a different trailer and then when you consider Roadway's management policy of repair they've got a policy of

juggling defective equipment up and down the road. You get a trailer that's got a defect on it and they don't want to fix it, they want to get it out of their area and put it off on somebody else, in fact they will even tell you that, get the hell out of here, we don't want to fix it, get the hell out of here and let it tear it up on somebody else, you know. So that's what you got to contend with there and after he told me that he personally was going to see to it that I got mine uh, him with his childish emotional problems that's what he did. That's my position, there's no doubt about it. Now let me tell you uh what happened on the trip that I left from Lark Park to St. Petersburg. All right. I went on call at 0.75 on the 21st which is 45 minutes after 12:00 midnight on the 21st. Okay. By a quarter to four the dispatcher give me work call and she immediately told me said she had been busy and she looked at my card wrong and she thought 075 which is 45 after 12 midnight meant 45 after 12 noon and that would make me available for the 3:00 call instead of the 12. She said she had been busy, made a mistake and run around me. Well this dispatcher is a woman and she had been sick the last couple of days and had passed out in the terminal and I knew this and she asked me said are you gonna file a grievance on me. That was 3 hours she run around me. I said no don't worry about it, you just forget it. 3 hours \$40.00. Now do you think I would give up \$40.00 to drive to St. Petersburg and tear up a truck, pull the wire out of a truck in order to get 6 hours and 1/2. It just don't make sense. There ain't no mathamathics is just not there and then on 11/17 about 5 days prior to this I was dispatched to St. Petersburg and the (inaudible) spring broke and the truck was getting full throttle. I had another spring under the floor board somehow which would cause it to go all the way forward getting full throttle and so I stopped and called in and uh, I tried for 1 hour to get a mechanic in Tampa and St.

Petersburg, they couldn't get a mechanic. The dispatcher told me, said I can't get nobody at home, ain't nobody home. She said do you think you can fix it yourself, you know. I said yeah, I think I can fix it, I says I'll try, so by sticking the toe of my shoe on the accelerator and pulling it back I was able to drive to the terminal. Okay. The dock supervisor was the (cough) only terminal person on duty there, management person. He got some wire and a flash light and watched as I wired the accelerator spring back. Now if I had been wanting to get break down time I could sit on the side of the road for no telling how long until they could get a mechanic. She told me, said we can't get one in Tampa or St. Pete. I could have set there for no telling how long. That was just 4 or 5 days prior to this. All right. On 10/30 I was dispatched on a run and my headlights went out. This is in reference to Willie Raush and Ron Holbrook statement just a minute ago and they stopped (inaudible) I talked to them on the radio and told them my lights went out. We checked everywhere and couldn't find the problem and so I borrowed Will Raush's knife and I cut the wire on the lights and hooked em into the circuit breaker and got some lights on dim, I had me some dim lights. Okay I drove the truck all the way to Miami with dim lights, I wrote it up in the writers book and Mr. Webb mentioned the writeup book like it's a big deal you know. There's nobody at Lake Park that (inaudible) writers book on a turn run and if you doubt my word you can check the field line (sounds like) you won't find it, nobody and when people do write in the book like they are going to Miami they don't fix it see, so I drove the truck all the way back to Lake Park on dim see, and also you are supposed to sign the back of the writers book when you leave Lake Park. Nobody does that but me. I'm the only one there that does it and I do it every trip and I checked the book and I noticed nobody else did it, or I'd have seen the signature on the previous pages, nobody does that. So don't let it blow

smoke on you like this is a big deal, you know. He is trying to give his side and I'm telling you the facts. Okay. This happened on 10/30 about the lights—I fixed the head lights and I didn't have to do that, I didn't have to drive them on dim, that's a DOT violation. Okay. On 10/10 I had another problem with head lights. I got down to (inaudible) and my head lights was going on and off, on and off and I stopped at the scale house there and I called the dispatcher, and I say my head lights are going on and off but they are on right now you know. He waited awhile and he says I can't get you no vendor there I ain't got no vendor. He said you reckon you might drive down to Lake City and maybe I'll get a vendor there. I said that's what I'll do, I'll drive to Lake City and you call there and see if you can get a vendor you know, and I'll call you back when I get there. Well, I got the truck driven all the way to Lake City, lights didn't go out the first time so I didn't stop. All right. I got south of Lake City and they started again, on and off, on and off. Then I stopped at a truck stop just below Lake City. Just before I got to the truck stop the lights went out and I called him back. I said well I didn't stop at Lake City because they stayed on. I thought I'd make it. He said I can't get a vendor there either you know, and so he said you reckon you can fix it, I says I don't know I'll see, I'll what I can do. So I opened the hood and checked the oil line over there and found the problem. The wires next to the radiator and this was an old city truck, and due to the heat of the radiator caused all the insulation to crack off the wires and it was so bad you couldn't even wire it up. It was ridiculous to try and wire it up so what I did I just pulled all the wires apart, you know, and got it where it wouldn't short out and drove it on. Drove to Orlando, drove that way and back and the next day I saw a mechanic and he said it took him a solid day to rewire that truck, it was just so bad you know. And while I'm on the wire it is just nothing unusual to get in a

Roadway truck and see wires hanging down here and there you know, upon the dash you know. It's not a problem at all and I have drove these trucks these old model Whites, they've got aluminum or metal accelerator pedal and when you put enough miles on the pedal will bend to one side and it will strike the brake pedal, and I drove those things and you could look down and see fire all down there. When the accelerator pedal hit the brake pedal it would make fire under there you know so the mechanics do they take the (inaudible) and cut part of the accelerator pedal off so it would fit (cough). You have all kinds of wiring problems on Roadway trucks and the main problem that causes these problems is management themselves, they are not fixing these trucks, they don't want to fix em, they don't want to fix em, they just want to drive the trucks up and down the road and then when a driver has breakdown time they come up there and try to blame it on the driver you know, like it was the driver's fault. Now, the fuel man told me one day, he told me that the shop foreman was getting on to him because he checked the trucks and the drivers come by there and found something wrong with it and he was getting on to him about it, and he blew up at the shop foreman and told him, he said, I'm getting sick and tired of Archie Jenkins betting in there and harassing them drivers you know and making em check these trucks and come out here and breaking down and him jumping on me. It's management causing this problem you see. So you can see just because a mechanic might check the truck or whatever don't mean the lights are working or in proper working order. To give you an example of that. I remember one time checking a truck going out leaving for Lake Forest, went out and checked the truck and the dang tail light was hanging out of the socket by the wire by maybe about 8 or 10 inches, just hanging down out of the socket you know and the mechanic just checked the truck. What they do, the mechanics and the switchers at these

other terminals they are not switcher, like Earl said, they are cock workers. They go out there and they're in a daze, they go out there and they don't even look at nothing, they just hit the fires maybe and a light can be out and the four of the marker lights on the cab of the tractor is so (inaudible) you wouldn't hardly notice you know, it is something that you just wouldn't notice by all of them being out. If you had to rule that one of them was out and the others on you might notice, but the fact that all of em was out you probably wouldn't notice. So it is not unusual at all to be dispatched with a truck and the mechanic just checked it and found all kinds of defects with it. I checked a truck one day and it had 2 flat tires on it. I remember checking it one day and the wheels was busted in three sections, the whole wheel was fixing to come off. I have checked them and the lug bolts backed off, the wheel was about to run off see. So . . .

Excuse me. Okay.

Now, the specific day I left Lake Park, let's get this straight, the specific day I left I went and clocked out and got in the truck, walked around and checked, every light on that truck was working, had the dome light on and everything and I stood in front of the truck a few minutes and the fuel man named Charlie, I said Charlie it looks like everything is working on this trip and he said yeah, said I didn't find nothing wrong with it when I checked it you know. He said but if this little marker light on the fender is not working we don't have to fix that. I said who told you that and he said I'd rather not say. Because Charlie is the fuel man and he can't read and write and he is going—they told the shop foreman what I just told you about the relay manager getting the drivers upset and making them breakdown and he told me later, I'm not going to say nothing no more cause they'll be firing me. So when I asked him who told you that and he said I'd rather not say.

So I said I know who told you that, Archie Jenkins told you that, I said he told Bob Steele and Phil the same thing and Bob Steele told if he didn't fix his dome light he wouldn't give him no writeup either cause he couldn't see how to write. So I said Charlie you've fixed a lot of tail lights out here hadn't you, he said yes, that's right, and I said—I mean tag lights, and I said you know the tag lights have gotta work, you know the marker light has gotta work and that dome light has gotta work, he said yeah, you're probably right about that but ain't nobody told me no different. So I got in the truck and left. Now my procedure is, every trip, this has never failed and when I first heard about this I thought Archie Jenkins had set me up to fire me and I'll tell you why. Every trip I leave I get the truck and tractor lined up straight. I pulled up to the stop sign about 100 feet from the stop sign and stop and I see my trailer in the mirror to see if my mirrors is set so I do this every trip, it never fails. My mirrors wasn't in line so I put on the brakes and you can't just turn around in the seat to get over there, you got to pick your foot up and step over because the doghouse covers the engine, it's right here beside the seat and so you gotta stand up to see and pick your feet up and stand up over there and maneuver around the gear shift leaver to get over there to roll the window down. All right I turn on the dome light, I did this maneuver like I'm telling you, got over there and holding my hand on the door I took my left hand and turned the window crank and rolled the window down and adjusted my mirror and rolled it back up. I noticed everytime I turned the crank that the back of my hand was hitting something you know, so I looked down to see what it was and there was a wire coming out, just making a U turn out of the corner of the dash, there's a little crack about 3 inches wide in the corner of the dash, maybe 6 or 8 inches high and there's some wire that's poked up in there you know and there is more than one, there's several wires up

in there, I noticed this wire, did not see no broke section on it, no plug in or anything, it was just a perfectly good wire come out and made a U turn. So the reason I looked cause I could see it, I wanted to see what was hitting my hand and I saw it you know and I said just the wire I thought it went to the heater, I thought it went to the heater because there is nothing else over there that would—any kind of electrical device cause the heater is right under the dash there. So I thought nothing about it. I turned the dome light off and got in the seat and got out on the road, on the interstate. Well I drove about maybe 30 miles or something like that and I looked out checking my mirror I noticed that I didn't have my mirror just right. I hadn't adjusted it just proper so I just stopped down at the truck stop at Lake City and I'll just adjust it again there cause I'm real particular about my mirror because the mirror needs to be adjusted straight and I've had several instances where if I hadn't had my mirror adjusted proper I could have had an accident so this is the procedure I do all the time. Originally I thought that maybe Archie slipped out there and pulled the wire or got the wire leal loose so my hand would hit it on purpose, that was what I was thinking when I first heard about this discharge you know. I felt suspicious about them characters up there but anyway, I stopped down at the truck stop in Lake City and I did the same procedure over, I got up out of the seat and got over there cause you gottan get up out of the seat, you can't reach it from the seat, I got up on the right side and rolled the window down and again my hand was hitting that wire, I didn't look this time cause I knew what it was. I knew what it was, I paid it no attention, but I remember hitting it so I got to my mirror and rolled the window back up and I wasn't at the truck stop but a few minutes and come back out and then I left. Well, I got on the road. I'd say about 30 minutes later I reached up and turned on the dome light was gonna see what time it was you know.

Now in your own mind, I'm not trying to blow smoke on nobody, I want everybody to use their own judgment on this, you are grown people you can decide for yourself. Is it reasonable for a driver to turn on the dome light to see what time it is? Is that an unreasonable act or is it reasonable. I was on a trip for about 250 mile trip and wouldn't you think a driver would turn on the dome light to see what time it is on a 250 mile trip at night see. All right. You make your own decision about this, this is what happened. Reached up and turned on the dome light to see what time it was, the dome light didn't come on so I pulled the bulb out. The bulb in the city tractors is a long bulb about as big as your little finger and maybe two inches long and it fits in 2 clips. I just reached and pulled it out and stuck it up there in front of the instrument light . . .

END OF TAPE

THIS WILL BE A CONTINUATION OF CASE NO. 38,
Local 528 v. Roadway. Union continue.

Okay. After leaving the truck stop I turned on the dome light to see what time it was, it wouldn't come on so I pulled the bulb out and put it in front of the instrument light thinking the bulb was blowed. I was gonna see if I could see the filiment blowed in there but the truck was vibrating so bad I couldn't tell. I had the little side vent open on the left there and I said it's just a blowed bulb, and I pulled my hand back and started to throw it out the window but I said no, I said I might be throwing away a perfectly good bulb, you know, I don't want to do that, so I said I'll just put it back in the fixture and let the mechanic check it when I get back to Lake Park. All right. I put it back up in the fixture and I thought well it maybe the just the switch was bad so I flipped a little switch on the side of the fixture a bunch of times and it didn't flicker on not even one time so I just the switch like it was but I left it in the position cause I didn't know whether it was on or off.

Okay. I continued on the trip. I got about 45 minutes from St. Petersburg and I stopped to rest about 5 minutes. I got back on the highway there and about 5 trucks come around me real fast cause I was going kind of slow and they already had their speed built up and come around me real fast. (inaudible) and the same instant there I was meeting the St. Petersburg bid driver Bob Steele who just left St. Petersburg and he was going north. He said hell, my marker lights ain't out here cause I'm setting here looking at them. Well later on he told me that he has problems with his legs and he is a short fellow and he sits low in the seat and he was looking at reflections on the reflector glass bug shield on the hood see and he could see them but I never have seen my marker lights from that angle cause I'm taller and I set with my seat all the way up and never noticed them. He said hell, my marker lights ain't out, I'm setting here looking at em, the driver come back and said I'm talking about the southbound, well I kind of tried to look and see if I have or not I could see em in my trailer, they were working. I couldn't see em on the roof I didn't know if they was working or not but I flipped the switch and my radio antenna was mounted on my mirror bracket right beside the door. I looked out and I could see a faint flow of light on my antenna and I think, well the switch is just stuck cause that is not unusual for the switch to stick so I thought I had corrected the problem. I thought I had it corrected and thought nothing else about it. I thought the problem was corrected. So I got. So I got down to the terminal in St. Petersburg and I punched in and he asked if I wanted to go to eat or go to unch and he said it won't be but just a few minutes, you want to go to lunch or wait. So I just waited. Well, the switcher come and got in the truck and dropped out to the trailer and hooked it to the other truck and I was just kinda walking out in the yard there, il-ling time waiting, and I could see the truck, the second trailer from the door there, and they were unloading freight on it. I had to wait about thirty minutes for them to

unload the freight see. What had happened the switcher went and switched the truck out and checked the lights supposedly and then later on the dock worker drove the truck around to the front of the terminal see. The truck sat there about 30 minutes roughly while they were unloading freight, I could see em running in and out there with a forklift or eomthing, they was moving big boxes in and out of the trailer see and so I waited around there and I was standing on the porch, the entrance to the terminal maybe a 6 x 6 porch maybe 4½ feet higher then the ground level with the ground about dock level and I was standing on the porch and the switcher pulled the truck around and uh he cut the engine off and saw me standing there and he cranked the engine right back up you know and got out of the truck, come on in the terminal. Well when he got out I went on it and punched my pay card, I already had my pay card already and the switcher didn't go in there and tell Mike Titus it's okay or nothing because when he come in, got out of the truck, I punched out and went and checked my truck. Well I walked around the truck and checking the truck and I saw the lights out. Well, uh, I went and got back in the truck and made a little writeup and I keep the writeup book right in front of the steering wheel. Well I couldn't see how to write so I get the writeup book and hold it up against the windshield cause the lights was on around the terminal and I could see to write—you got the terminal code number at the top and then you got a big space at the bottom and I just opened my log book and laid it on the steering wheel, I just wrote all the marker lights on the tractor out, you know, just kinda in the dark, just king of at random like that. He called a mechanic and it didn't take the mechanic long to come there and I told him—now to the best of my belief I told him when he came there that you gotta fix the marker light on the trailer too now. I'm not gonna swear to that but I believe I told him that you know. I'm pretty sure, I said you got to fix the marker light on the trailer too and

uh he uh checked around the circuit breaker-box there under the steering wheel for a few minutes and got back in the seat and looking around, looking around up around the headlight and all trying to see where the wire—any wire exposed I guess he saw the wire in front of the door handle. The reason all them questions about the door handle, can you roll up the window was asked because the wire was in front of the door handle. If you couldn't reach the window crank you couldn't reach the wire because the wire was in front of the window crank see. So he got out of the seat, completely out of the seat, just like I was telling you I had to do and worked around the gear shift lever there to get over there and connected the wire. I was standing on the ground and when he connected the wire the marker lights on the cab come on and the dome light came on at the sametime. I said what was the problem, he said just a loose wire come unplugged, that's all he said. Now he didn't stay there long enough to look for no finger prints or dust prints at all, he connected the wire. Now what would you think a mechanic would do. Would he connect the wire then look around here to see if I see any finger prints on that wire? Of course, he connected it—he done his job then got out. Well, I said that was what was wrong with the dome light too. I said I thought the bulb was blowed. So he got out of the truck and I said don't forget the marker light on the trailer cause like I said, I believe I told him when he got there so he climbed up on the exhaust pipe and got on the roof of the tractor. By this time Mike Titus came back of the terminal, standing over there on a little porch and walked (inaudible) climb up on the roof of the tractor and pulled a marker light out. Well the marker light was flicking on and off, he pulled it out and it would flicker on and off and you push it back in it would go out, he did that about three times then pulled it all the way out and scraped off the neck and put in back in and it stayed on. So I went back in punched the clock got

my delay time and 4800 less than half an hour. Drove all the way back to Lake Park, I got there—I left close to 1:00, got to Lake Park maybe a quarter after six, punched out, went on home, went to bed. About a quarter after three the dispatcher called me and said he was reading me a letter of discharge for an act of dishonesty by creating a false breakdown. He was real apologetic about it, he said I'm really worry about this and all, wel there ain't no hard feelings between me and you, you know and he said well, Archie Jenkins, relay manager is on vacation and it's up to me to fire you, you know. I mean, that was coming from the boss—I said we ain't got no hard feelings you know and that's pretty much how it was. So you know, I went and filed a grievance and all and on the 8th of December. Now Mr. Webb mentioned the employment office up there. I went to the employment office to put in for unemployment benefits. All right, Archie Jenkins shows up there and he puts this big speel like Mr. Webb just did on you all about me not signing the writeup book. Well, they denied my benefits, said you failed to follow a work order. Well the lady up there said that's no big deal, said they are gonna deny it on any little legitimate thing they think is legitimate see. Anything to keep from paying, they are going to deny it see. So I went and filed an appeal and the appeal is to be heard later but anyway to get to the point when I met Archie at the employment office—I've been knowing Archie for about 5 years now and you don't know somebody for 5 years and not kind of pick up a little bit of vibrations there or whatever about they react when they are told different things. So I was settin there and I asked him—I read the statement that Mike Titus had signed and uh he said he saw me come into the terminal and the marker lights on the cab was on and I told Archie, I said a person wouldn't notice whether them marker lights was on or not unless they was particularly look for them, you know. Then I read further in the statement and said he

saw me bend over in the seat and saw the marker lights go out. I said Archie, that's a lie, I said I didn't even bend over the seat, he didn't see me do that. I said he is lying to you, I said Archie you have known me for about 5 years, hadn't you, and he said yeah—said have you ever known me to lie to you? He said no, not that I'm aware of and I said I'm not lying to you now—sayd Mike Titus is lying to you and I can prove it. Then I told him about meeting Bob Steele and the conversation on the radio and I said did you know about that? He said no, I didn't know about that and I told him about the dome light being out. I said I knew the dome light was out, I said I didn't have to create a breakdown to get to Lake Park, I already knew the dome light was out and I knew they didn't have no bulbs down there. I said I didn't have to create a breakdown to get to Lake Park, I already had a bredkdown I was aware of. The dome liught was out. I knew it you see, so I didn't have to tear up the truck. Then I asked him I said did you know the marker light was out on the trailer, the top of the trailer. He said no, said he didn't tell me that either. I said ain't that kind of strange you know, he wasn't thinking about all that and I said he was just trying to do what he had threatened to do, he was just trying to see to it that I got mine, trying to fire me. That's all he is trying to do, and so the muscles in his face starting twitching and he started squirming around in his chair you know. He said me, when is that Committee hearing gonna be and I knew what was on his ming right then, he realized he had done fired a man for no reason at all. I had done been off for 2 weeks and had 2 weeks to go and he was gonna have to reinstate me and it just tore him up, I could see it you know. Cause he learned the facts then, he hadn't even been told the facts when I was discharged. But really when he discharge me, I've known Archie Jenkins for about 5 years, now Archie Jenkins wouldn't have discharged me if he had saw me bend over in the truck and saw those lights

go out unless he had saw me pull the wire. He wouldn't have discharged me and the reason he discharged me, he had his ass covered. Archis Jenkins is a CYA man if you know what I mean, cover your ass, now he don't make a move without covering his ass. Now Mike Titus had done messed up and Archie was on vacation at the time and he knew it wouldn't be any reflection on him if he could make it stick fine you know and if he didn't it would be Mike Titus' ass not his see. So he had known me for 5 years, he had never been aware of my creating any breakdown, I have never created any breakdown, in the 7 years I've been there at Roadway and he had never known me to lie to him. Now, I'll bring out one final point.

Off the record, telephone ringing.

Okay.

I'll bring out one point, final point, about — I mentioned Archie had knowed me for 5 years and never known me to create any breakdown or even lie to him. I went and had a polygraph test made and uh Mr. Webb kept you all from hearing that you know, and you might want to know why he kept you from hearing. We don't want to mention that. Okay, but anyway I was told by the fellow that give me that test that . . .

Mr. Hutstetler unless you have some new evidence that hadn't been introduced into the record, I think we've got a pretty good picture of what happened.

That's all I can think of. That's how everything happened.

This is Earl Parker with Local 528. I got two comments I would like to make or whatever. I want you to remember now that this happened at 1:00 A.M. in the morning, it was at night. Like I state awhile ago in the picture there Mike Titus—that's a day time picture that we took, 45 feet away from the tractor when he claimed he seen Jerry Hut-

stetler leaning over or whatever, assumed that he done this. I feel like this, if the company had assumed or thought that Jerry Hutstetler dishones or caused the breakdown, dishonestly, they should have fired in right on the spot, not waited until he finished the trip and went home and then discharged him. I feel like if Roadway thought he actually done it, dishonesty, they would have fired him right on the spot. That's the union's case at this time, subject to rebuttal.

Company rebut.

Pete Webb for the company. We didn't discharge him because we didn't know that the vendor had simply re-plugged the thing before he left and we thought it best to keep him on (inaudible) the quickest way had it happened, but to kind of refute to the fact that Mr. Hutstetler claims he is a perfect employee. Well, first of all I would like to say that we don't have fuelers or hostlers at Rampa, all these people are qualified city employees who do the drop and hood for road drivers and who do it daily and they are constantly doing that and they are qualified to make pre-trip inspections and they can tell when marker lights are burning or not. The violation that some of these guys refer to here in these statements that they take that they said that they had made DOT violations, I think all of them refer to the fact that for a period of time we instructed them to pull the two 45 foot double trailers into the terminal at Miami rather than dropping them at the place designed for that along side the parkway out there, but we did find out about a month after we started that we couldn't continue to do that because of Florida law but we did go back to the end of that drop area and start going it again and I think that's the violation that they are referring to. I think Roadway has been to this Committee many times with discipline taking to mechanics who do not repair units, giving warning letters and road drivers dispatch and come back and there is something wrong that

the mechanic should have repaired—I don't know of the trailer light deal, we are not accusing Mr. Hutstetler of doing anything to the trailer lights and the statement that I read to you and the people down there say that all the mechanic did was bump the trailer light a couple of times and it came on. I would like to read to you a couple of statements here the supervisors to dispel the fact that Mr. Hutstetler was a perfect employee as he claims . . .

This is Earl Parker with Local 528. Gentlemen, I was not present when these statements were made from supervisors . . .

I was not present when he made the claims that he's making that he has done all these things either and we have other things to verify these.

Archie Jenkins was present when these statements was made.

Are these statements from supervisors?

Yes.

You can read them in the record.

Well, I was not present. How could we argue the point what he's reading and that we couldn't ask the supervisors questions?

Will, how can I argue the point of these things he's talking about?

Archie Jenkins was present, at the time all these statements was made, the relay manager was present.

I'm talking about the things that Jerry is talking about, these breakdowns that he supposedly did . . .

Was the union offered those statements? Given a copy of those statements?

I don't know.

No, I didn't know he had them.

Well, I'll let those statements go, I will read a statement that was written to Archie to the job steward. Now this is from the job steward in Valdosta, and It's dated September 11, 1983.

This is Earl Parker with Local 528. Gentlemen, I didn't know nothing about this statement.

It says copies to the steward and Local 528 . . .

Well, I think this is improper due to the fact that I was not present when this statement was given or whatever reason the job steward or whoever [Illegible] to them. I think it's improper.

It is rebuttal to the fact that Mr. Hutstetler has made some things—that he repairs trucks etc. He brought up one particular one that happened back in September, the allegation that he made to the terminal manager and this was an attempt to explain it to him by the relay manager who told the steward that he would like to meet with Mr. Hutstetler. The steward went to Mr. Hutstetler and this is the response we got from the steward in writing with a copy to Local 528 and linehaul drivers. This per the steward Mr. Gene Walker one of which of those statements he read in here and I assume he gave a copy to the union since he is a steward.

Whatever you are gonna read I don't know what you are gonna read, I don't . . .

Whether he did or didn't is not my fault.

The whole thing on this is that I was not present. I asked Archie Jenkins when I left Wednesday night at 8:00 when he got through. With all this I stayed down there from 1:00 to 8:00 investigating this whole situation. I asked him when I left did he have anything pertaining to Jerry Hutstetler's case that I didn't have and he said no, you got everything.

Then you have got this, according to your job steward. When was this taken?

September 11.

September 11?

We didn't take it. He came and gave it to us.

Does it show a copy to the union?

Yes, it does.

I have not seen a copy from the steward. I don't even know what it's about. I indicate again, I asked Archie Jenkins, the relay manager at 8:00 Wednesday night did he have anything else pertaining to Jerry Hutstetler, I wanted copies of it. He said no, you got everything. I went and spent almost 11:00 Wednesday night and had all these statements typed up and carried them—my secretary personally carried them down and gave them to the relay manager that night with a statement that Bob Steele and all them made—now I think they should show me the same courtesy. When I ask for stuff I should be able to get it. Now you know . . .

I suppose he assumed that you had it since it came from the steward.

Now, if he had shown it to me . . .

It really had nothing to do with this particular incident just as those things . . .

Well, I don't think it's fair to this gentleman to be able to read something there from the job steward even though it might pertain to this case or not to pertain to it. I don't think it's fair to me personally due to the fact that he's my job steward.

Well, if you feel that way Earl, I won't read the thing, but I will read some other facts that I've got into the case that shows Mr. Hutstetler through 10 period of 1983 has been paid \$1,292.38 in breakdowns on 57 breakdowns for 98.28 hours delay time. The next closest employee has been paid \$289.00 in breakdowns. Mr. Hutstetler in 1982 at one point, since he has brought up his perfect record, was broke down down in Florida somewhere and we told him to-after he was repaired and his rest was up, we told him to bring the unit home and he took it to his house.

Well, this case was heard at the Committee level, and it was denied.

everybody talking at once.

To get back to the facts of the case, two union people have stated that the lights were working. A vendor has stated he went to the truck, the plug was unplugged . . .

Your old supervisor the terminal manager . . .

Wait a minute. Let him finish this case Earl.

I'm not talking about that now. The plug was unplugged and it would not have vibrated loose. That's our case.

Those people are assuming that you know, that it was he that done it. You don't have no proof on the man. Your terminal manager stated down there in front of me and Archie . . .

That's the facts of the case.

Is there anything new to be entered into the record?

No, sir I don't have nothing unless Mr. Hutstetler has anything.

Mr. Hutstetler do you have anything further to add that has not already been stated to this Committee?

Well, I think everything has been fairly well covered. The only thing that I can say is in reference to what Mr. Webb said about all this breakdown time . . .

everybody arguing.

Stay on the case that we have before us which is a discharge case. Do you have anything further to add?

I would like to ask Mr. Webb is that breakdown time or does that include delay time, picking up bills and when you break down have to go in bed for 8 hours?

It's breakdown time.

That's what I'm talking about. All that time he is talking about when you break down and you run out of hours you gotta go to bed. Now here is the situation they used to do.

I understand that.

Yeah. They used to let you be relieved of duty see and then the relay manager wouldn't let me be relieved of duty on a breakdown, he would make me log it on duty. That caused me to run out of hours, I'd have to go to bed. He was trying to harass me—for some reason he thought it

was gonna keep the truck from tearing up, see. But I've never in my life tore up a Roadway truck and you can believe that.

Executive session.

DECISION: Case 38. IT IS THE DECISION OF THE COMMITTEE THAT THE CASE IS DEADLOCKED TO THE AREA.

Case No. 38. Discharge Agenda, December 19, 1983
Southern Multi-State Grievance Committee

EXHIBIT 5

Case No. 7

Local 528 v. Roadway

Operators Committee

Union Committee

Pulliam

Morgan

Graham

Smith

McIntosh

Davis

The transcript of the Multi-State hearing will be made a part of the record. If the parties have anything to add at this time state your name and proceed for the record.

Earl Parker for Local 528. Mr. Webb in the transcript stated that Mr. Hufstettler applied for unemployment and it was denied. He appealed it—I got copies of the letter from the Employment Board and they did grant him his unemployment. I would like to pass it up to the Chairman of the Committee. That's all the union has got to add.

Company?

WEBB: The company has nothing further to add.

All parties excused.

DECISION: Case No. 7 DENIED, COST TO THE UNION.

Case No. 7. Discharge Agenda, January 30, 1984
Southern Conference Area Grievance Committee

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

File No. C85-997A

ROADWAY EXPRESS, INC., A DELAWARE CORPORATION,
PLAINTIFF,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR; ALAN C.
MCMILLIAN, REGIONAL ADMINISTRATOR, REGION FOUR,
UNITED STATES DEPARTMENT OF LABOR, DEFENDANTS.

AFFIDAVIT OF LEON P. SMITH

County of Fulton
State of Georgia

1. My name is Leon P. Smith. I am employed by the United States Department of Labor, Occupational Safety and Health Administration, as the Regional Supervisory Investigator of the 11(c) Section in Atlanta, Georgia.

2. In my capacity as Supervisory Investigator, I have knowledge of the Department of Labor's procedures for the conducting of investigations under § 405 of the Surface Transportation Assistance Act of 1982 [49 U.S.C. § 2305] [hereinafter the "Act"]. I also have knowledge of the Department's investigation conducted under the Act into the complaint of Jerry W. Hufstetler, which complaint was filed on February 7, 1984. The field investigator who investigated Mr. Hufstetler's complaint was Don Cameron of my staff.

3. In the investigation of cases under the Act, the Secretary of Labor, through the Occupational Safety and Health Administration, utilizes experienced investigators

who conduct a substantial investigation to determine whether a complaint has merit. Under existing investigatory procedures, the persons alleged to be primarily responsible for the discriminatory action are afforded the opportunity to fully state and support their positions. Additionally, the assigned field investigator is required to verify the complainant's allegations through credible, independent evidence. The investigator's report is then reviewed by the regional supervisory investigator, and, where a complaint is found to have merit, by the Occupational Safety and Health Administration's Regional Administrator and by attorneys within the Office of the Solicitor.

4. The investigatory and review procedures outlined in paragraph 3, hereinabove, were utilized in full in the investigation of Hufstetler's complaint under the Act, and led to a finding on behalf of the Secretary of Labor of reasonable cause to believe that Hufstetler's complaint had merit.

I have freely given this Affidavit, and, to the best of my knowledge and belief, it is true, accurate and correct.

/s/ LEON P. SMITH

Leon P. Smith

Sworn to and subscribed to before
me this 6th day of February, 1985.

/s/ EVELYN W. BAKER

Notary Public

My Commission Expires: 12-13-87.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action File No. C-85-997A

ROADWAY EXPRESS, INC., PLAINTIFF,

v.

WILLIAM E. BROCK, SECRETARY OF LABOR; ALAN C.
MCMILLAN, REGIONAL ADMINISTRATOR, REGION 4,
UNITED STATES DEPARTMENT OF LABOR, DEFENDANTS.

SECOND AFFIDAVIT OF HARRY D. WEBB

1.

My name is Harry D. Webb. I am employed by Roadway Express, Inc. as Manager, Labor Relations, headquartered in Atlanta, Georgia. I have been employed by Roadway for twenty-three years. For the past 7 years I have had responsibility for handling grievances brought by Roadway employees, including road drivers, under procedures established pursuant to Articles 43-45 of Southern Area Conference Over-the-Road Supplemental Agreement to the National Master Freight Agreement ("NMFA") (See Exhibit "A").

2.

As Manager of Labor Relations, I am responsible for a geographic area which includes Eastern Tennessee, and all of Georgia, Florida and Alabama. Approximately 700 to 800 road drivers work in that geographic area for Roadway. Roadway operates nationwide and has substantial numbers of drivers working out of terminals throughout the continental United States. By any measure, Roadway is one of the nation's largest over-the-road carriers.

3.

In handling NMFA grievances for Roadway I consult with the local manager of the terminal where the grievance is filed, gather facts and prepare the company's side of the case, and represent the company at arbitration panel hearings. In my geographic area, the first level of hearings is before the Southern Multi-State Grievance Committee. This Committee is composed of three members from the management of trucking companies other than Roadway, and three members from the International Brotherhood of Teamsters, none of which is from the local union representing the grievant. A decision reached by the Multi-State Committee is final and binding upon both the union and the company. Decisions are reached by a majority vote. In the event of a deadlock, the case automatically goes to the second level grievance committee, the Southern Area Conference Grievance Committee. Its composition and voting procedures are the same as the Multi-State Committee. In the event of a deadlock at the Area Committee, the case would proceed to a National Grievance Committee. In the event the National Committee's failure to reach a decision by majority vote the parties would have the right to resort to economic action (i.e. strike or lockout).

4.

Multi-State Committee meetings are held on the fourth Monday of each month. In discharge cases, the cutoff date for submitting a grievance for a hearing during any month is the 15th; therefore, at a maximum, discharge cases are ordinarily resolved at the Multi-State level within approximately five weeks after grievances are filed. Area Committee meetings are held quarterly. Depending upon the exact date of the scheduled Area Committee meeting, cases which proceed to the area level are ordinarily resolved within three months after a deadlocked Multi-State decision. Decisions rarely, if ever, proceed to the national

level; in my experience more than 98% of all cases, including discharge cases, are resolved at the Multi-State or Area levels.

5.

In discharge cases, when a grievance is filed, the grievance automatically goes to arbitration under the provisions of the NMFA. Although either the union or the company may waive its right to an immediate hearing at the next available Multi-State Committee meeting, this is almost never done in discharge cases since the employee is not being paid and the company continues to have liability for back pay prior to resolution of the dispute. Under the NMFA, both Multi-State and Area grievance committees have authority to reinstate employees with full, partial or no compensation for time lost. When the Area or Multi-State Committee finds in favor of an employee in discharge cases, the employee is reinstated.

6.

Roadway attempts to keep its terminals fully staffed, but not overstaffed, with the number of road drivers needed to handle existing business. Therefore, when a road driver is discharged, a driver is hired to replace him when such action is justified by economic conditions. When a driver is subsequently reinstated by order of an NMFA Committee or otherwise and an extra driver is not needed at the driver's home terminal, a driver at that terminal is then laid off in accordance with the terms of the NMFA.

7.

This affidavit is given to be used as evidence in support of Roadway's Motion for Summary Judgment in the above-styled case. The facts recited herein are based upon my personal knowledge.

/s/ HARRY D. WEBB

Harry D. Webb

Subscribed and sworn to
before me this 4th day
of September, 1985.

[Signature Illegible]

Notary Public

My Commission Expires: 6-30-88

PLAINTIFF'S EXHIBIT A

interline terminal at point of destination of his run when the terminal of his own Employer is closed.

Section 5.

Time Off

The Employer shall provide in his dispatch rules and/or procedure suitable provisions relating to time off at the home terminal.

Any procedure or rule agreed to shall not be less than the following: When an extra board driver is available for work or works for a period of seven (7) days, the Driver will be entitled to thirty-six (36) hours time off for the seven (7) day period. If a driver elects to take less than thirty-six (36) hours off, this shall constitute a day off. If the Driver elects not to take the time off, these days will be accumulated. Not more than fifteen percent (15%) of the extra board drivers at the terminal involved shall be permitted to be off for any reason, excluding vacations, at the same time. Accumulated days off and seniority shall determine the employees entitled to time off.

Section 6.

Use of Lease Equipment

Certificated or permitted carriers shall use their own available equipment together with all leased equipment under a minimum thirty (30) day bona fide lease arrangement with owner-operators on a rotating board, before hiring any extra equipment.

Section 7.

Extra Contract Agreements

(a) The Employer agrees not to enter into any other agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement.

Company Rules

(b) The Employer is permitted to make and enforce any reasonable Company rules which do not conflict with the provisions of this Agreement. All such rules shall be posted for a period of seven (7) days and the Local Union shall be furnished a copy of such rules prior to posting. [Illegible].

ARTICLE 43.

GRIEVANCE COMMITTEES

Section 1.

The Employers and the Unions, parties to this Agreement, shall together create and maintain permanent State or Multiple State Committees covering the States covered by this Agreement. The State or Multiple State Grievance Committees shall remain as now established unless changed by mutual agreement between the parties to this Agreement. It shall be the function of these Committees to adjust the disputes which cannot be settled between the Employer and the Local Union. The State or Multiple-State Grievance Committees shall consist of an equal number of members appointed by Employers and Unions, but not less than three (3) from each group. Each group may appoint alternates to serve in the event of absence of permanent members.

When a State or Multiple State Grievance meeting is called, it shall be compulsory for each member of the Committee or the alternate to attend. Each State or Multiple State Grievance Committee shall meet within fifteen (15) days after either group Committee Chairman serves written notice on the other requesting a meeting [End of Page 97 of Exhibit].

[Start of Page 102 of Exhibit] or the Southern Conference Area Grievance Committee shall have the right to examine

time sheets and any other records pertaining to the computation of compensation of any individual or individuals whose pay is in dispute, or records pertaining to a specific grievance.

Section 5.

National Grievance Committee

Grievances and questions of interpretation which are subject to handling under the provisions of Article 8 of the National Agreement shall be referred to the National Grievance Committee in accordance with such Article 8.

Section 6.

Committee Expense

Any meeting room expense involved in such proceedings shall be shared equally between the parties to this Agreement.

ARTICLE 45.

DISCHARGE OR SUSPENSION

Section 1.

The Employer shall not discharge, suspend or take any other disciplinary action as respects any employee without just cause, but in respect to discharge, suspension or other disciplinary action shall give at least one warning notice of the complaint against such employee to the employee in writing by Certified Mail and/or in person and a copy of same to the Union affected, by Certified Mail; except that no warning notice need be given to an employee before he is discharged if the cause of such discharge is dishonesty, drinking of or under the influence of alcoholic beverages or narcotics while on duty, and/or the failure to submit to a sobriety test upon request if the employee appears to be under such influence, or carries or permits the carrying of drugs or narcotics on his person or equipment that is pro-

hibited by state or federal law, or drinking alcoholic beverages on company property, or recklessness resulting in serious accident while on duty, or the carrying of unauthorized passengers, or the failure to report an accident, or willful damage or destruction of company property or equipment, or engaging in unprovoked physical violence while on Company property or while on duty. The warning notice as herein provided shall not remain in effect for a period of more than six (6) months from date of said warning notice. All warning notices, discharges, suspensions, or other disciplinary action must be by proper written notice to the employee and the Union affected. Any employee may request an investigation as to his discharge or suspension. Should such investigation prove that an injustice has been done an employee shall be reinstated. The State or Multiple State Grievance Committee and the Southern Conference Area Grievance Committee shall have the authority to order full, partial or no compensation for time lost. Appeal from discharge, suspension or warning notice must be taken within ten (10) regular working days by written notice, and a decision reached within fifteen (15) days from the date of discharge, suspension or warning notice. If the employee involved is not within the home terminal area when the action of discharge, suspension or warning notice is taken, the ten (10) regular working day period will start from the date of his return to the home terminal, provided the employee returns home at the approximate time he would have arrived home if he had completed his tour of duty. If no decision has been rendered on the appeal within fifteen (15) days the case shall then be taken up as provided for in Article 44 of this Agreement.

Section 2.

Any employee discharged away from his home terminal shall be provided the fastest available transportation to his home terminal at the Employer's expense.

Section 3.

In all cases where an employee is unable to report for work at the regular starting time, for any reason, he shall immediately notify the Supervisor on duty. Failing to so notify the Supervisor on duty he shall not be reinstated upon his return to work unless a reasonable explanation is furnished to the Employer. The first violation of this Article shall result in a warning notice to the employee. On the second such violation of this Article employee may be disciplined or discharged. Habitual absenteeism will be grounds for discharge, after proper notice to the employee and the Union.

ARTICLE 46.**EXAMINATIONS AND IDENTIFICATION FEES****Section 1.**

Physical, mental or other examinations required by a government body or the Employer shall be promptly complied with by all employees, provided, however, the Employer shall pay for all such examinations. The Employer shall not pay for any time spent in the case of applicants for jobs and shall be responsible to other employees only for time spent at the place of examination or examinations, where the time spent by the employee exceeds two (2) hours, and in that case, only for those hours in excess of said two (2) hours. For all other examinations, physical or mental, not required by law the employee shall be paid at the hourly rate for time spent at the place of such examination, except for those examinations required when a employee is returning to employment after illness or injury. Examinations are to be taken at the employee's home terminal. Employees will not be required to take examinations during their working hours.

The Company reserves the right to select its own medical examiner or physician, and the Union may, if it be-

lieves an injustice has been done an employee, have said employee re-examined at the Union's expense.

In the event of disagreement between the doctor selected by the Employer and the doctor selected by the Union, the Employer and Union doctors shall together select a third doctor within seven (7) days, whose opinion shall be final and binding on the Company, the Union, and the employee. The Company nor the Union nor the employee will attempt to circumvent the decision. The expense of the third doctor shall be equally divided between the Employer and the Union. Dispute concerning back pay shall be subject to the grievance procedure.

No employee shall be required to take any form of lie detector test as a condition of employment.

Should the Employer find it necessary to require employees to carry or record full personal identification, such requirement shall be complied with by the employees. The cost of such personal identification, shall be borne by the Employer.

ARTICLE 47.**MEAL PERIOD**

Employees may take one hour total for meals in each ten (10) hour period. No employee shall take more than one (1) hour total during such ten (10) hour period or be compelled to take any part of such one (1) hour before he has been on duty three (3) hours or after he has been [End of Page 105 of Exhibit].

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. C-85-997A

ROADWAY EXPRESS, INC., A DELAWARE CORPORATION,
PLAINTIFF,

v.

WILLIAM E. BROCK, SECRETARY OF LABOR; ALAN C.
MCMILLAN, REGIONAL ADMINISTRATOR, REGION FOUR,
UNITED STATES DEPARTMENT OF LABOR, DEFENDANTS.

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

Pursuant to the provisions of L.R. 220-5(b)(1), N.D. Ga. and in support of its motion for summary judgment filed herewith, defendant Roadway Express Inc. ("Roadway") submits its statement of material facts as to which there is no genuine issue to be tried:

I.

Roadway is a common motor carrier engaged in interstate trucking as a part of its business in Lake Park, Georgia; as a part of its business, Roadway employees operate commercial motor vehicles in interstate commerce principally to transport cargo; Roadway therefore is subject to the provisions of Section 405 of the Surface Transportation Assistance Act of 1982 ("STAA"), and to defendants' efforts to enforce the provisions thereof. (Complaint, ¶ 15, Ex. C; Answer, ¶ 15).

2.

On November 22, 1983, former Roadway employee Jerry W. Hufstetler was discharged by Roadway Express Inc. for an alleged act of dishonesty. (Complaint, ¶s 5, 7; Defendant's Answer, ¶s 5, 7).

3.

On November 27, 1983, Hufstetler filed a grievance under the provisions of the National Master Freight Agreement, a collective bargaining agreement governing the working conditions of Roadway employees at the company's Lake Park Georgia facilities who are represented by Teamsters Local Union No. 528 ("Local 528"). (Complaint, ¶ 7; Answer, ¶ 7).

4.

Discharge cases filed as grievances under the NMFA ordinarily are resolved at a first level arbitration panel hearing or within three months thereafter if a deadlock occurs at the first level (Multistate) and the case proceeds to a second level arbitration panel (Area). (Second Webb Aff., ¶¶ 4-5).

5.

Under the NMFA, Multistate and Area arbitration panels have the right to reinstate discharged employees with full, partial or no compensation for time lost; when such panels find in favor of a discharged employees, the employee is ordered reinstated. (Second Webb Aff., ¶5).

6.

When Roadway drivers are reinstated by order of a NMFA committee or otherwise, and an extra driver is not needed at the driver's home terminal, a driver at that terminal is laid off in accordance with the terms of the NMFA. (Second Webb Aff., ¶ 6).

7.

On December 19, 1983, Hufstetler's grievance was heard before the Southern Multi-State Grievance Committee ("Multi-State Committee"), an arbitration panel established pursuant to the terms of the NMFA. (Complaint, ¶ 9; Answer, ¶ 9).

8.

The Multi-State Committee deadlocked and the case was referred to the Southern Conference Area Grievance Committee ("Area Committee"), a second level arbitration panel established pursuant to the terms of the NMFA. (Complaint, ¶ 9; Answer ¶ 9).

9.

On January 30, 1984, the Area Committee denied Hufstetler's grievance and sustained his discharge for an act of dishonesty in creating a false breakdown at Roadway's St. Petersburg, Florida terminal. (Complaint, ¶ 9; Answer, ¶ 9).

10.

On February 7, 1984, Hufstetler filed a telephonic complaint with the Atlanta office of the United States Department of Labor ("DOL") in which he complained that he had been discharged because "the St. Petersburg's terminal manager was upset [when he] requested costly repairs needed for truck driving safety." (Complaint, ¶ 10; Answer, ¶ 10).

11.

Upon the receipt of this complaint by telephone, the DOL began an investigation to determine whether Hufstetler had been terminated from employment by Roadway in violation of Section 405 of the Surface Transportation Assistance Act ("STAA"), 49 U.S.C. § 2305. (Complaint, ¶ 10; Answer, ¶ 10).

12.

DOL investigated Hufstetler's complaint through an investigating officer; pursuant to DOL's request during the investigation, Roadway submitted a written position statement with supporting affidavits explaining the circumstances of Hufstetler's discharge and the NMFA arbitration decision upholding the discharge. (Complaint, ¶ 11; Answer, ¶ 11).

13.

On September 7, 1984 Roadway's counsel wrote a letter to DOL stating Roadway's position that any preliminary order reinstating Hufstetler prior to the conduct of an evidentiary hearing would constitute a denial of due process of law under the Fifth Amendment to the United States Constitution. Complaint, ¶ 12; Answer, ¶ 12).

14.

During DOL's investigation of Hufstetler's complaint, DOL denied Roadway access to written statements of witnesses provided to DOL during its investigation of Hufstetler's complaint on the grounds that such statements were "confidential," and denied Roadway knowledge of names of the individuals from whom statements were taken by the DOL investigator. (Complaint, ¶ 14; Answer, ¶ 14).

15.

Defendants' procedures for determining whether to issue temporary reinstatement orders pursuant to 49 U.S.C. § 2305(c)(2)(A) include a field investigation by an assigned DOL employee, a review of the investigator's report by a regional supervisory investigator, and, where the investigator finds the complaint to have merit, by the Occupational Safety and Health Administration's Regional Administrator and by attorneys with DOL's of-

office of the Solicitor; such procedures do not include an evidentiary hearing on the merits of the complaint prior to issuance of such a temporary reinstatement orders. (Affidavit of Leon P. Smith, ¶ 3).

16.

To date, DOL has established no regulations or other procedures whereby an evidentiary hearing is to be conducted prior to DOL's issuance of pre-hearing preliminary orders of reinstatement pursuant to 49 U.S.C. § 2305(c)(2)(A). (Smith Aff., ¶ 3).

17.

On or about January 21, 1985, DOL rendered its Secretary's findings and preliminary order ordering Roadway to "immediately" reinstate Hufstetler to his former position as a road driver prior to any hearing on Hufstetler's STAA complaint; the January 21, 1985 order also required payment of back pay calculated from the date of Hufstetler's discharge. (Complaint, ¶ 15, 19; Answer, ¶s 15, 19; Smith Aff., ¶ 4).

18.

On or about January 31, 1985, Roadway timely filed its objections to the January 21, 1985 Secretary's findings and preliminary order pursuant to 49 U.S.C. § 2305(c)(2)(A). (Complaint, ¶ 16; Answer, ¶ 16).

19.

A substantial controversy exists between Roadway and defendants with respect to whether 49 U.S.C. § 2305(c)(2)(A), insofar as it purports to empower and require defendants to issue preliminary order of reinstatement prior to the conduct of an evidentiary hearing, is unconstitutional and void as violative of the minimum requirements of procedural due process under the Fifth Amendment: Roadway contends that the due process clause of the Fifth

Amendment requires that an evidentiary hearing be conducted prior to the issuance of any order of reinstatement; defendants contend that the Secretary of Labor is constitutionally empowered and required under 49 U.S.C. § 2305(c)(2)(A) to issue and enforce such preliminary orders of reinstatement without such a hearing. (Complaint, ¶ 22; Answer, ¶ 22).

Respectfully submitted,

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In the Supreme Court of the United States

No. 85-1530

WILLIAM E. BROCK, SECRETARY OF LABOR, AND
ALAN C. McMILLAN, REGIONAL ADMINISTRATOR,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
APPELLANTS

v.

ROADWAY EXPRESS, INC.

APPEAL from the United States District Court for the
Northern District of Georgia.

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted.

May 19, 1986